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March 17, 2016

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

RE: XXXXX
Reference: #16-065

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 January 4, 2016, the MSDE received a complaint from Mr. XXXXXXXXXX and Mrs. XXXXXXXXX, hereafter, “the complainants,” on behalf of their daughter, the above-referenced student. In that correspondence, the complainants alleged that the Carroll County Public Schools (CCPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to the student.

There is a sixty (60) day timeline for completion of the complaint investigation process. However, due to the number of allegations and documents to be reviewed, it was necessary to extend the timeline for completion of this Letter of Findings, pursuant to 34 CFR §300.152.

The MSDE investigated the allegations listed below.

1. The CCPS did not ensure that the results of a functional vision assessment recommended by the Individualized Education Program (IEP) team on January 23, 2015 were considered by

the team until September 2015, resulting in a delay in addressing the student's need for vision services, in accordance with 34 CFR §§300.301 - .305 and COMAR 13A.05.01.06.

2. The CCPS has not ensured that the IEP goal related to reading comprehension and vocabulary is based on the student's present levels of academic achievement and functional performance since January 23, 2015, in accordance with 34 CFR §300.320.
3. The CCPS did not ensure that prior written notice of the decision to revise the reading comprehension and vocabulary goal in effect since January 23, 2015 was provided, in accordance with 34 CFR §300.503.
4. The CCPS did not ensure that proper procedures were followed when conducting a reevaluation on May 22, 2015 and June 19, 2015, in accordance with 34 CFR §§300.8, .301 - .305, and COMAR 13A.05.01.06. Specifically, it is alleged that the team did not consider all of the evaluation data and did not follow the criteria for identifying the student with an Intellectual Disability under the IDEA.
5. The CCPS did not follow proper procedures when responding to a request for an Independent Educational Evaluation (IEE) in the area of adaptive skills that was made on May 22, 2015 and June 19, 2015, in accordance with 34 CFR §300.502.
6. The CCPS did not follow proper procedures when responding on January 14, 2015 to a request to amend the student's educational record, and when responding to a request that was made following the June 19, 2015 and November 11, 2015 IEP team meetings, and when responding to a request for amendment of progress reports that was made in January 2016, in accordance with in accordance with 34 CFR §§300.618 and .619.
7. The CCPS did not ensure that written notice of the June 19, 2015 and November 11, 2015 IEP team meeting was provided as required, in accordance with 34 CFR §300.322 and COMAR 13A.05.01.07.
8. The CCPS did not ensure that the annual IEP goals related to reading comprehension and math calculation were developed either by the IEP team or through an agreement of the parties since November 11, 2015, in accordance with 34 CFR §300.323.
9. The CCPS has not ensured that the annual IEP goals are based on the student's present levels of academic achievement and functional performance since November 11, 2015, in accordance with 34 CFR §300.320.
10. The CCPS has not ensured that the IEP has addressed the student's need for travel training services since November 11, 2015, in accordance with 34 CFR §300.324.

11. The CCPS has not ensured that the IEP has been provided within five (5) business days of the November 11, 2015 IEP team meeting, in accordance with COMAR 13A.05.01.07.
12. The CCPS has not ensure that the student has been provided with the assistive technology required by the IEP since January 2015, in accordance with 34 CFR §§300.101 and .323.
13. The CCPS has not ensured that the student has been provided with the special education services required by the IEP, as indicated below, since the start of the 2015-2016 school year, in accordance with 34 CFR §§300.101 and .323.
 - a. The student has not been provided with the required amount of speech services;
 - b. The student has not been provided with the required amount of physical education services;
 - c. The student has not been provided with adapted reading materials;
 - d. The student has not been provided with graphic organizers to assist with producing written work;
 - e. The student has not been provided with support for writing such as close outlines and sentence starters;
 - f. The student has not been provided with peer tutoring;
 - g. The student has not been provided with transition services;
 - h. The student has not been provided with independent living skills training related to cooking;
 - i. The IEP team has not monitored data on the amount of adult support required by the student to reduce her reliance on adult support;
 - j. The student has not consistently been provided with advance notice of tests in English;
 - k. The student has not consistently been provided with visuals to assist with learning vocabulary;
 - l. The student has not been provided with multi-step work that is broken down into single-step components and scaffold to show the desired outcome in math;
 - m. The student has not been provided with Second Chance Learning; and
 - n. The student has not been provided with visual modifications.
14. The CCPS did not ensure that the student was provided with the vision services required by the IEP between September 3, 2015 and October 15, 2015, in accordance with 34 CFR §§300.101 and .323.
15. The CCPS did not ensure that the student was provided with special education instruction to assist her in achieving the annual IEP goals to improve reading and written language skills from November 11, 2015 until January 11, 2016, in in accordance with 34 CFR §§300.101 and .323.

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16. The CCPS did not ensure that services for “math enrichment” were provided to the student during a “support mod,”¹ as required by the IEP during the 2015-2016 school year, in accordance with 34 CFR §§300.101 and .323.
17. The CCPS did not ensure that the student has been provided with the amount of vision services in the general education classroom required by the IEP since October 15, 2015, in accordance with 34 CFR §§300.101 and .323.

INVESTIGATIVE PROCEDURES:

1. On January 5, 2016, the MSDE sent a copy of the complaint, via facsimile, to Mr. Russell Gray, Director of Special Education, CCPS.
2. On January 6 and 15, 2016, February 1, 2016, and March 10, 2016, Ms. Anita Mandis, Section Chief, Complaint Investigation Section, Family Support and Dispute Resolution Branch, MSDE, conducted telephone interviews with the student’s mother about the allegations investigated.
3. On January 7, 9, 10 - 13, 15 - 18, 21 - 28 and 31, 2016, February 2 - 9, 11, 13 – 25, 27, and 29, 2016, and March 6, 7, 8, and 10, 2016, the complainants provided the MSDE with additional documentation, via electronic mail (email), some of which contained allegations of additional violations.
4. On January 8, 13, 15, 16, 17, 24, 25, 29, 2016, February 1, 2, 4, 5, 6, 7, 8, 10, 11, 18, 19, 22, 23, 25, and 28, 2016, and March 1, 6, 7, and 10, 2016, the MSDE sent a copy of email correspondences from the complainants to Mr. Wayne Whalen, Coordinator of Compliance, CCPS.
5. On January 8, 2016, the MSDE sent correspondence to the complainants that acknowledged receipt of the complaint and the additional email correspondence, and identified the allegations subject to this investigation based on the information provided. On the same date, the MSDE notified the CCPS of the allegations and requested that the CCPS review the alleged violations.

¹ XXXXXXXXXXXXXXX operates on a four mod day, each mod being 80 minutes in duration. There are two semesters each school year, each semester being 18 weeks in duration. A semester long class earns one credit. There are four marking periods. A class that lasts for one marking period will allow students to earn one half of a credit (www.carroll12.org). A review of the student’s schedule reflects that she has a “support mod” each day (student’s schedule).

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6. On January 11 and 15, 2016, the MSDE provided the CCPS with additional information about the allegations being made.
7. On January 15, 2016, the MSDE sent correspondence to the complainants further clarifying the allegations subject to the investigation. On the same date, the MSDE notified the CCPS of the allegations and requested that the CCPS review the alleged violations.
8. On January 17, 2016, the complainants raised additional allegations.
9. On January 21, 2016, the MSDE received audiotapes from the complainants for review.
10. On January 28, 2016, the MSDE sent correspondence to the complainants adding the new allegations subject to the investigation. On the same date, the MSDE notified the CCPS of the allegations and requested that the CCPS review the alleged violations.
11. On February 1, 2016, the MSDE sent correspondence to the complainants adding new allegations subject to the investigation based upon additional information that they provided to the MSDE.
12. On February 9, 2016, the MSDE received additional information from the complainants alleging additional IDEA violations.
13. On February 10, 2016, Ms. Mandis and Ms. K. Sabrina Austin, Education Program Specialist, MSDE, conducted a site visit at XXXXXXXXXXXXXXXX to review the student's educational record, and interviewed the following school system staff:
 - a. Mr. XXXXXXXX, Teacher – Visually Impaired;
 - b. Dr. XXXXXXXX, Special Education Teacher, English;
 - c. Mr. XXXXXXXX, Principal;
 - d. Mr. XXXXXXXX, Orientation and Mobility Instructor;
 - e. Ms. XXXXXXXX, Special Education Teacher – Case Manager, Math;
 - f. Ms. XXXXXXXX, Assistive Technology Practitioner; and
 - g. Ms. XXXXXXXX, English Teacher.

Mr. Whalen, Ms. Kathy Kaufman, Supervisor of Special Education – High Schools, CCPS, and Ms. XXXXX, Special Education Instructional Consultant – High Schools, CCPS, attended the site visit as representatives of the CCPS and to provide information on the CCPS policies and procedures, as needed.
14. On February 11, 2016, the MSDE sent correspondence to the complainants adding new allegations subject to the investigation.

15. On February 12, 2016, the CCPS provided the MSDE with a copy of correspondence that was sent to the complainants on that date in response to their request for amendment of the student's educational record.
16. On March 2, 2016, Ms. Mandis conducted a telephone interview with Ms. XXXXX and Dr. XXXXXX about the allegations. Mr. Whalen participated on the telephone call.
17. On March 8, 9, and 10, 2016, the CCPS provided the MSDE with requested documents.
18. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
 - a. Report of a private psychological assessment, dated May 15, 2013;
 - b. Report of a private psychological assessment, dated August 15, 2013;
 - c. Electronic mail (email) message from the school staff to the student's mother, dated December 12, 2013;
 - d. Goals pages from an IEP, dated January 27, 2014;
 - e. Report of a private vision evaluation, dated August 11, 2014;
 - f. Letter from the student's private optometrist, dated August 19, 2014;
 - g. Email messages between the school staff and the student's mother, dated October 22, 2014 and December 14, 2014;
 - h. Written summary of an IEP team meeting, dated January 30, 2015;
 - i. Written summary of an IEP team meeting, dated March 10, 2015;
 - j. Email message from the CCPS to the complainants, dated January 19, 2015;
 - k. IEP, dated January 23, 2015;
 - l. Transcript of the audio recording of the January 23, 2015 IEP team meeting;
 - m. Notice and Consent for Assessment, signed and dated February 9, 2015;
 - n. Report of functional vision assessment, dated March 13, 2015;
 - o. Email messages between the student's mother and the school staff, dated March 13, 15, and 16, 2015, October 22, 23, and 26, 2015, November 18 and 20-23, 2015, December 2, 3, 5, and 9, 2015; and February 4, 2016;
 - p. Letters from the CCPS to the complainants, dated March 18, 2015 and March 31, 2015;
 - q. Notice and Consent for Assessment, dated May 22, 2015;
 - r. Emails between the student's mother and the school staff, dated May 30 and 31, 2015;
 - s. Email from the school staff to the student's mother, dated June 11, 2015;
 - t. Written summary of the reevaluation that began on May 22, 2015 and ended on June 19, 2015;

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- u. IEP, dated June 19, 2015;
- v. Transcript of the audio recording of the June 19, 2015 IEP team meeting;
- w. Email message from the student's mother to the school staff, dated July 7, 2015;
- x. Email message from the school staff to the student's mother, dated July 21, 2015;
- y. IEP, dated September 3, 2015;
- z. Written summary of the September 3, 2015 IEP team meeting;
- aa. Eligibility Determination form, dated September 3, 2015;
- bb. Report of the student's progress towards achievement of the physical education goal, dated October 6, 2015;
- cc. Email message from the school staff to the student's mother, dated October 23, 2015;
- dd. Email message among the school staff, dated October 30, 2015;
- ee. Parent contact log from October 30, 2015 to November 3, 2015;
- ff. Written notice of an IEP team meeting, dated November 3, 2015;
- gg. Email message from the school staff to the student's mother, dated November 5, 2015;
- hh. Email messages between the school staff and the student's mother, dated November 8 and 9, 2015;
- ii. Report of an orientation and mobility assessment, dated November 11, 2015;
- jj. IEP, dated November 11, 2015;
- kk. Written summary of the November 11, 2015 IEP team meeting;
- ll. Transcript of the audio recording of the November 11, 2015 IEP team meeting;
- mm. Email messages between the student's mother and the school staff, dated November 17, 2015;
- nn. Email messages from the school staff to the complainants, dated November 18 and 20, 2015, forwarding a "draft" IEP;
- oo. Email messages between the student's mother and the school staff, dated November 18 and 20, 2015;
- pp. Email message from the school staff to the student's mother, dated November 22, 2015;
- qq. Email message from the school staff to the student's mother, dated November 23, 2015;
- rr. Email message from the student's mother to the school staff, dated November 28, 2015;
- ss. Email messages between the school staff and the student's mother, dated between November 30, 2015 and December 2, 2015;
- tt. Email message among the school staff about the provision of physical education services on December 3, 2015, dated December 1, 2015;
- uu. Email message from the student's mother to the school staff, dated December 9, 2015;
- vv. Email messages between the student's mother and the school staff, dated December 9, 11, and 13, 2015 and January 25, 2016;

- ww. Email messages between the student's mother and the school system staff regarding the fade plan, dated from December 13 to 21, 2015;
- xx. Report of the student's progress toward achievement of the written language goal, dated December 18, 2015;
- yy. Email messages from the student's mother to the school staff, dated December 19 and 22, 2015;
- zz. Email message from the school staff to the student's mother, dated December 21, 2015;
- aaa. Email messages from the school staff to the student's mother, dated December 23, 2015;
- bbb. Correspondence from the complainants alleging violations of the IDEA, received by the MSDE on January 4, 2016;
- ccc. Email messages between the student's mother and the school staff, dated January 7 and 8, 2016;
- ddd. Email messages from the student's mother to the school staff, dated January 10 and 17, 2016;
- eee. English lesson plan, dated January 11, 2016;
- fff. Email message from the school staff to the student's mother, dated January 12, 2016;
- ggg. Email message from the student's mother to the MSDE, dated January 15, 2016;
- hhh. Email messages from the student's mother to the school staff, dated January 17, 2016;
- iii. Email messages between the student's mother and the school staff dated between January 19 and 21, 2016;
- jjj. Email message from the student's mother to the school staff, dated January 23, 2016;
- kkk. Email message from the school staff to the student's mother, dated January 25, 2016;
- lll. Email message from the student's mother to the MSDE, dated January 28, 2016;
- mmm. Email message from the student's mother to the school staff, dated February 4, 2016;
- nnn. Email message from the student's mother to the MSDE, dated February 4, 2016;
- ooo. Email messages between the student's mother and the school staff, dated February 5 and 7, 2016;
- ppp. Email message from the student's mother to the school staff, dated February 8, 2016;
- qqq. Email message from the student's mother to the MSDE, dated February 9, 2016;
- rrr. Letter from the CCPS to the complainants, dated February 12, 2016;
- sss. Email messages between the student's mother and the school staff dated between February 14 and 16, 2016;
- ttt. Email message from the school staff to the student's mother, dated February 19, 2016;

- uuu. Email message from the student's mother to the MSDE, dated February 24, 2016 forwarding data collected for monitoring of the student's fade plan;
- vvv. Email message from the student's mother to the MSDE, dated February 25, 2016;
- www. Email message from the school staff to the student's mother, dated February 26, 2016;
- xxx. Email message from the school staff to the student's mother, dated February 27, 2016;
- yyy. Email message from the student's mother to the MSDE, dated February 27, 2016;
- zzz. Email message from the school staff to the student's mother forwarding a writing assignment, dated February 29, 2016;
- aaaa. Email messages between the student's mother and the Transition Instructor, dated March 5 and 9, 2016;
- bbbb. Email messages from the student's mother to the MSDE, dated March 6 and 7, 2016;
- cccc. Email messages between the student's mother and the student's special education English teacher, dated March 8 and 10, 2016;
- dddd. Email message from the CCPS to the MSDE, dated March 9, 2016, containing information about an upcoming IEP team meeting;
- eeee. Email message from the student's mother to the MSDE, dated March 10, 2016, forwarding information on Seamless Transition;
- ffff. Report of Scholastic Reading Inventory lexiles by grade;
- gggg. CCPS Intellectual Disability Eligibility Determination Tool;
- hhhh. School schedule;
- iiii. Speech/language provider's service log;
- jjjj. Vision teacher's service log;
- kkkk. Communication log between the school staff and the complainants;
- llll. Flex Tracker Report;
- mmmm. The student's agenda;
- nnnn. The English teacher's assignment log;
- oooo. English 11 Course Overview;
- pppp. Home Access Center log; and
- qqqq. 2015-2016 schedule of activities for the Advisory Period.

BACKGROUND:

The student is seventeen (17) years old and is identified as a student with Multiple Disabilities under the IDEA, including a Speech/Language Impairment, Visual Impairment, and an Other Health Impairment related to diagnoses of XXXXX, XXXXX, and XXXX (XXXXXXXXX). The student attends XXXXXXXXXXXXXXX and has an IEP that requires the provision of special education instruction and related services (Docs. k, u, y, jj, and ll).

During the period of time addressed by this investigation, the complainants were provided with written notice of the procedural safeguards (Docs. k, u, y, jj, and ll).

**ALLEGATION #1 REVIEW OF RESULTS OF A FUNCTIONAL VISION
ASSESSMENT**

FINDINGS OF FACTS:

1. At an IEP team meeting held on January 23, 2015, the complainants requested that the team consider written reports about the student's vision, which had been made by the student's private physicians. The reports indicate that the student has visual problems that cause difficulty with locating and tracking, which limits the amount of information that can be processed or understood at a time and interferes with reading comprehension. The reports also identify the student with problems with depth perception (Docs. e, f, and l).
2. The IEP team recommended that a functional vision assessment be conducted, and on February 9, 2015, the student's mother provided written consent for the assessment to be conducted (Doc. m).
3. On September 3, 2015, the IEP team considered the March 13, 2015 report of the results of the functional vision assessment and determined that the student requires special education instruction as a result of difficulty with aligning her eyes for near vision tasks, focusing on objects near and far, and controlling eye movements, including those used for fixation and tracking. Annual goals were added to the IEP for the student to demonstrate the ability to appreciate the differences and similarities in shapes, forms, etc. and to visually follow moving objects presented at both near and far distances. The team decided that visual services were required in order to assist the student in achieving the goals (Docs. y, z, and aa).

DISCUSSION/CONCLUSIONS:

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

Based on the Findings of Facts #1 - #3, the MSDE finds that the CCPS did not ensure that the results of a functional vision assessment were considered by the IEP team within the required timelines, and that a violation occurred with respect to the allegation.

ALLEGATIONS #2, #3, #8, #9, AND #15

**REVISION OF IEP, PRIOR WRITTEN
NOTICE, AND PROVISION OF
SPECIAL EDUCATION
INSTRUCTION IN READING AND
WRITTEN LANGUAGE**

FINDINGS OF FACTS:

Reading Comprehension and Vocabulary Goals Since January 23, 2015

4. On January 23, 2015, the IEP team reviewed and revised an IEP, dated January 27, 2014. The January 27, 2014 IEP included a reading vocabulary goal for the student to use strategies to understand word meaning, “given modified grade level text.” The IEP also included a reading comprehension goal for the student to use strategies to comprehend grade level text, which included short-term objectives for the student to achieve “with the use of modified grade level text” (Doc. d).
5. On January 23, 2015, the IEP team documented that the student was performing “under grade level” in reading comprehension and that “her ability to identify and fluently decode text is substantially stronger than her comprehension and vocabulary skills.” The IEP indicates that, during the previous month, the student, who was in the tenth grade, performed at a second grade level on a Scholastic Reading Inventory (SRI)² and that her scores had improved since taking the test in May and September 2014 (Docs. k and ffff).
6. The audio recording of the January 23, 2015 IEP team meeting reflects that the student’s mother reported that the student continues to require instruction and assessment on a modified curriculum and the other IEP team members agreed. The student’s mother asked how the student would be able to participate in general assessments now that modified assessments are no longer administered in Maryland. The school-based members of the team discussed some of the supports that will be made available to the student to transition her from participation in modified assessments to participation in the general assessments (Review of the audio recording of the January 23, 2015 IEP team meeting).

² This is a computer adaptive reading comprehension test that assesses student reading levels and tracks student growth over time. It automatically monitors the response to every question and adapts to the student’s ability. For example, if the student misses a question, the next quest is slightly easier. If the student answers correctly, the next question will be slightly more difficult (www.scholastic.com).

7. The January 23, 2015 IEP, and each subsequent revision of the IEP, states the following:

The IEP team has agreed that [the student's] needs have not changed since she previously qualified for Modified State Assessments. Modified assessments are no longer available to [the student]. However, the IEP team feels that would still be appropriate and will be requesting unique accommodations (Docs. k, u, y, and jj).

8. The IEP requires the provision of special education instruction and supplementary aids and services, including modifications to reduce the length and complexity of course content and daily assignments "to the extent that the curriculum allows and the material is still within diploma standards." The IEP further states that "whenever possible," the student will be provided with adapted books "modified down to the point that vocabulary and content are still appropriate to earn course credit," and that she needs to have text read aloud that is above her instructional level for comprehension and to keep focused on the task (Docs. k, u, y, and jj).
9. The audio recording of the January 23, 2015 IEP team meeting reflects that the student's mother reviewed goals that had been proposed by the school-based members of the team and indicated that she had no concerns other than the fact that the annual goals contained fewer short-term objectives. The school staff explained that this was because the student had mastered some of them. The IEP team also discussed that the reading comprehension and vocabulary goals were combined because vocabulary is a part of reading comprehension (Doc. l and review of the audio recording of the January 23, 2015 IEP team meeting).
10. The IEP that was revised following the January 23, 2015 meeting states that the reading vocabulary and comprehension goals were combined into one goal for the student to use strategies to comprehend grade level text, including content vocabulary, when provided with "informational text." The short-term objectives to be used to measure the student's progress on the goal included the student being able to recall in her own words what she has just read, identify the main idea, correctly identify vocabulary words, and give a definition of them in her own words (Doc. k).
11. The written summary of the January 23, 2015 IEP team meeting states that the IEP team "proposed to update objectives on goals," but does not indicate the basis for the decision to remove the use of modified grade level text from the reading goal (Docs. h, l, and review of the audio recording of the January 23, 2015 IEP team meeting).

12. At an IEP team meeting held on September 3, 2015, the IEP team discussed its previous agreement that the student continues to require instruction and assessment on a modified curriculum. A school-based member of the team reported that the MSDE Division of Curriculum, Assessment, and Accountability had rejected several of the unique accommodations that had been requested on the student's behalf for use on Statewide assessments in order to transition the student from modified to general assessments. The team discussed that they felt that the accommodations that had been approved would be sufficient, and that the student will be permitted to complete Bridge Projects³ in order to earn a Maryland High School Diploma if she does not pass the required Statewide assessments (Review of the audio recording of the September 3, 2015 IEP team meeting).
13. At an IEP team meeting held on November 11, 2015, the student's mother expressed concern that the textbook chosen for the student's English class does not have an adapted version, and indicated that the student will not be able to achieve the reading comprehension goal because she is not being provided with text that is adapted to a lower instructional level. The mother argued that if the goal was revised to require the use of instructional level text, the English text that is selected for the student's class will have to be a text that has an adapted version as required by the IEP (Doc. ll).
14. The audio recording of the November 11, 2015 IEP team meeting reflects that the school-based members of the team asserted that the goals need to be aligned with the grade level curriculum because the student is pursuing a Maryland High School Diploma, and that the student's mother asserted that the goals must be based on the student's present levels of performance. The audio recording also reflects that a member of the school staff indicated that revisions could be made to the goal so that it requires the use of text at the student's instructional level. However, the school staff member also indicated that "we still have to make sure it's eleventh grade English" (Doc. ll and review of the audio recording of the November 11, 2015 IEP team meeting).
15. In response to a request by the complainants for amendment of the written summary of the November 11, 2015 IEP team meeting, it was revised to state the following: "The parents proposed the goals have to be written on [the student's] instructional level not grade level, the team agreed to write her reading and writing goals on instructional level" (Doc. kk).

³ Students, who have not passed Statewide assessments, can earn a Maryland High School Diploma if they complete projects that demonstrate mastery of the curriculum content (www.marylandpublicschools.org).

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16. On November 18, 2015, the school staff sent a “draft” IEP to the complainants that included a reading comprehension goal that continues to require the student’s progress to be measured on her comprehension of grade level text and not instructional level text (Doc. nn).
17. From November 20-28, 2015, a member of the school staff and the student’s mother corresponded by email about the “draft” IEP. The correspondence reflects that the student’s mother and the school staff continued the disagreement that began on November 11, 2015 about whether the reading comprehension goal could measure the student’s progress on comprehension of instructional level text instead of grade level text. On November 28, 2015, the student’s mother provided suggested language for the reading and written language goals “based on grade level instead of instructional level as agreed to by the team.” However, the suggested language for the reading goal states the following:

[The student] will use a variety of strategies to comprehend grade level text that has been adapted for lower reading levels, including content vocabulary (Docs. oo-rr).

18. On December 3, 2015, the school staff sent the complainants an IEP that was marked “finalized.” It includes a reading goal that continues to require the student’s progress to be measured on her comprehension of grade level text. The IEP states that the student “is able to learn many new words but rarely uses them spontaneously in oral or written communication unless the word is within her visual space.” It also states that “it takes adult scaffolding of the pieces of the information” in order for the student to identify the main idea. It further states that “this is true of text on grade level and text at her instructional level (grade 2).” The IEP indicates that the student demonstrates weakness in making inferences, and that, in addition to improving her ability to comprehend what she has read, she needs to improve her ability to infer. A short-term objective was added to the goal for the student to answer inference questions in order to demonstrate understanding of text (Doc. jj).
19. On February 4, 2016, the student’s mother sent correspondence to the school staff suggesting new language for the reading comprehension goal based on recommendations made by the complainants’ educational consultant. The suggested language for the reading goal was the following:

[The student] will use a variety of strategies to comprehend grade level text that has been adapted for lower reading levels, including content vocabulary, as measured by obtaining an 80% or better on comprehension and vocabulary questions through modified/adapted classroom assignments and assessments.

The proposed goal includes short-term objectives for the student to demonstrate activities that are designed to increase her skills from her current levels of performance using modified grade level text (Doc. mmm).

Written Language Goal Since November 11, 2015

20. The audio recording of the November 11, 2015 IEP team meeting reflects that the student's mother expressed concerns about whether the student is being provided with appropriate supports, such as graphic organizers, in English. A school-based member of the team reported having observed that the student is provided with prompts to assist with completing written work, but that the student does not understand and is unable to respond to the prompts. The student's mother reported that the student is a visual learner with expressive language needs, making it difficult for her to get her thoughts down on paper without the use of appropriate graphic organizers, which is what was causing the student's frustration. The school-based members of the team reported that the 11th grade English curriculum required inferential reasoning, with which the student was struggling, which was causing her frustration. The student's mother indicated that until the work is modified down to the level where the student can work on it independently, as has been done in the past, she will continue to experience frustration (Review of the audio recording of the November 11, 2015 IEP team meeting).
21. At the November 11, 2015 IEP team meeting, the IEP team discussed revising the written language content goal for the student to use graphic organizers to respond to instructional level prompts instead of grade level prompts by providing clear and complete sentences with the provision of verbal scaffolding and the use of graphic organizers. The IEP indicates that, with multiple cues the student can organize her thoughts and ideas in order to form "simple sentences." However, it states that the student "is not currently writing topic sentences or closing sentences that are related to the prompt." Consistent with the IEP team's discussion, the IEP developed following the November 11, 2015 IEP team meeting requires that the student use graphic organizers with verbal scaffolding to respond to instructional level prompts. The IEP continues to include short-term objectives for the student to identify the graphic organizer to be used and state related details to complete the graphic organizer with prompting and choices. It also continues to include short-term objectives for the student to restate questions to respond to comprehension questions, add details to a written paragraph, complete topic sentences and closing statements, and participate in organizing her written response through verbal rehearsal and selecting the order for her sentences once they have been composed from a graphic organizer (Docs. jj, ll, and review of the audio recording of the November 11, 2015 IEP team meeting).

22. On November 28, 2015, the student's mother sent correspondence to the school staff providing proposed language for the written language goal, and again on February 4, 2016, proposing language based on recommendations made by the complainants' educational consultant (Docs. rr and mmm).
23. The correspondence between the student's mother and the school staff, dated December 9, 2015, reflects that the complainants have expressed concern about whether the student can achieve the written language goal within one year based on information from the school staff that the goal was being addressed only twice per quarter (Doc. uu).

Math Calculation Goals Since November 11, 2015

24. The audio recording of the November 11, 2015 IEP team meeting reflects that the team discussed that the student gets confused when doing two step math equations and that a short-term objective could be added to the math calculation goal to assist her with this skill (Doc. ll and review of the audio recording of the November 11, 2015 IEP team meeting).
25. The IEP that was provided to the complainants following the November 11, 2015 IEP team meeting includes a goal for the student to apply knowledge of rational numbers and place value to solve two step algebraic equations. It continues to include short-term objectives for the student to identify the variable in a given equation or expression and to be able to isolate a variable by using calculation skills to move the other terms to the other side of the equal sign. It also includes an additional short-term objective for the student to be able to identify the constant and the operation needed to move the constant to the other side of the equal sign (Doc. jj).

Cooking Schedule Since November 11, 2015

26. The audio recording of the November 11, 2015 IEP team meeting reflects that the IEP team considered the complainants' concerns that the student had not been given the opportunity to participate in a cooking class every other Friday, which is a transition activity on the IEP. The IEP states the following with respect to the transition services/activities to be provided: "[The student] will participate with the [life skills class] during their Friday cooking activities which will occur every other Friday (based on [the student's] schedule) or twice a month." The team discussed that the difficulty was that the school staff did not want the student to miss academic instruction in order to participate in cooking. The team discussed that, based on the student's current schedule, she would miss her chemistry class if she participated in cooking activities. The team discussed that the student would be enrolled in a physical education class during the Friday cooking activities starting the third marking period (February 1, 2016), and agreed

that she could be pulled from that class every Friday in order to ensure that she could participate in cooking activities and to make up for the time missed (Doc. ll).

27. The IEP that was provided to the complainants following the November 11, 2015 IEP team meeting was not revised to reflect the team's decision that, starting in February 2016, the student will participate in cooking activities every Friday. Instead, it continues to reflect that the student will participate in cooking activities every other Friday or twice per month (Docs. jj and kk).

Agreement for Compensatory Services

28. On November 30, 2015, the student's mother met with the school staff member who serviced as the public agency representative at the November 11, 2015 IEP team meeting. Together, they agreed to the provision of five tutoring sessions to compensate the student for the lack of the provision of a sufficient amount of special education instruction to assist her in achieving the written language goal and to begin progress monitoring on the written language goals (Doc. ss).
29. On February 5, 2016, the school staff sent the complainants correspondence indicating that once a teacher was identified, the five hours of tutoring services would begin. The student's mother responded by indicating that the agreed amount of services was no longer acceptable because the school staff have been unable to demonstrate that they have begun providing the student with the graphic organizers required in order for her to achieve the written language goal (Doc. ooo).

IEP Review and Revision – In General

30. A review of the audio recordings of IEP team meetings and correspondence between the parties reflects that the parties have had a practice of making some decisions at the IEP team meetings, then subsequently working to refine the language of the IEP following the meetings. This includes working on the specific language of the IEP goals (Docs. o and ll).
31. Since the November 11, 2015 IEP team meeting, the school system staff and the complainants have attempted to work out the language of the IEP, but have been unsuccessful in reaching agreement. An IEP team meeting was scheduled for March 31, 2016 in order to address the complainants' concerns about the IEP, but has been rescheduled for April 22, 2016 to ensure that the needed participants can attend (Docs. vv, www, and dddd).

Provision of Special Education Instruction in Reading and Written Language

32. The student's special education teacher, who delivers special education instruction on the reading and written language goals, provided the complainants with a lesson plan for January 11, 2016 that was developed for a substitute teacher. The plan states the following:

I have created several activities for [the student]. Since she is unpredictable in her rate of completion, there are many more things to do than I expect her to finish. If by some chance she does finish everything, ask her to begin reading the chapter "The Man I Killed" (it follows "Church") in The Things They Carried. The story is on her iPad (Doc. eee).

33. The special education English teacher placed a note on the lesson plan stating the following:

Since we are caught up in English 11 and I had a sub, it seemed like a great opportunity to introduce some instructional level activities (Doc. eee).

34. The teacher has also indicated to the student's mother that she would work with the student on instructional level activities when the work is completed on English 11 (Doc. xxx).

LEGAL REQUIREMENTS:

IEP Development, Review, and Revision

The IDEA requires that a student's IEP include measurable annual goals that are designed to both: (a) meet the needs that arise out of the student's disability; and (b) enable the student to be involved in and make progress in the general curriculum, which is defined as the same curriculum used for nondisabled students [Emphasis added](34 CFR §300.320).

The United States Department of Education (USDOE) has explained that the annual goals must be aligned with the State's academic content standards for the grade in which the student is enrolled, and take into account a student's present levels of academic achievement and functional performance [Emphasis added]. In a situation in which a student is performing significantly below the level of the grade in which the student is enrolled, the USDOE explained that the IEP team should determine annual goals that are ambitious but achievable, and ensure that the IEP includes "specially designed instruction," which the USDOE defines as an "element of special education instruction," that includes the following:

Adapting, as appropriate to the needs of an eligible child, the content, methodology, or delivery of instruction to address the unique needs of the child that result from the child's disability and to ensure access of the child to the general curriculum so that the child can meet the educational standards within the jurisdiction of the public agency that apply to all children [Emphasis added] (34 CFR §300.39 and *USDOE Dear Colleague Letter*, dated November 16, 2015 and Analysis of Comments and Changes to the IDEA, *Federal Register*, Vol. 71, No. 156, August 14, 2006, p. 46662).

In addition to the general academic achievement standards and assessments that apply to all children, States are permitted to define alternate academic achievement standards⁴ and administer alternate assessments based on those standards for those students with the most significant cognitive disabilities [Emphasis added] (34 CFR §300.160).

In the past, the USDOE also permitted, but did not require, States to define modified academic achievement standards and to develop assessments based on those modified standards. However, the USDOE no longer authorizes States to do so. In making this decision, the USDOE explained that, in the past, it was believed that, for a small group of students with disabilities, general grade-level assessments may be too difficult, but alternate assessments based on alternate academic achievement standards may be too easy [Emphasis added] (Comments to the final amendments to the Elementary and Secondary Education Act of 1965, *Federal Register*, Vol. 80, No. 162, pp. 50773-50784, August 21, 2015).

However, the USDOE explained that research has shown that low achieving students with disabilities make academic progress when provided with appropriate supports and instruction, and that accessible general assessments, in combination with these supports and instruction, can promote high expectations for all students. Therefore, the USDOE now expects the States to develop and implement general assessments aligned with instruction on college and career ready standards that will be accessible to these students [Emphasis added] (Comments to final amendments to the Elementary and Secondary Education Act of 1965, *Federal Register*, Vol. 80, No. 162, pp. 50773-50784, August 21, 2015).

⁴ In Maryland, alternate academic achievement standards are performance standards that are based on a limited sample of content that is linked to grade level content standards. This content, however, may not fully represent grade level content and may include content that is substantially simplified [Emphasis added] (MSDE Technical Assistance Bulletin 17, *Understanding the Criteria and Eligibility Process for Students with the Most Significant Cognitive Disabilities Participating in the Maryland Assessment Program*).

In publishing its rulemaking, the USDOE discussed the concept of student participation in a general assessment on a student's instructional level, which is referred to as "out-of-level" or "off-grade level" testing. The USDOE explained that this is the practice of assessing a student enrolled in one grade using a measure that was developed for students in a lower grade. With respect to this practice, the USDOE stated the following:

By definition, an out-of-level assessment cannot meet the requirements of a grade-level assessment because it does not measure mastery of grade-level content or academic achievement standards. In addition, out-of-level testing is often associated with lower expectations for students with disabilities, tracking such students into lower-level curricula with limited opportunities to succeed in the general education curriculum.

The USDOE further stated the following:

Although the Department agrees that some students may have a disability that affects their academic functioning, we disagree that students with disabilities, except those with the most significant cognitive disabilities, should be held to different academic achievement standards than their nondisabled peers [Emphasis added] (Comments to the final amendments to the Elementary and Secondary Education Act of 1965, *Federal Register*, Vol. 80, No. 162, pp. 50773-50784, August 21, 2015).

Previously in Maryland, students with disabilities could receive instruction and assessment on modified academic achievement standards that were aligned with the grade and course in which the student was enrolled, but that would be less difficult than regular course achievement standards. Currently in Maryland, students with disabilities are expected to pursue a Maryland High School Diploma and achieve standards based on end-of-course content acquisition and to participate in general assessments, unless they are students with the most significant cognitive disabilities who participate in alternate assessments.

In summary, the student who is seeking a Maryland High School Diploma must demonstrate mastery of the general curriculum, or the course content that is required for all students, and participate in assessments on that curriculum. In order for the annual goals to be aligned with that curriculum, they must measure the student's progress on that curriculum, and not the student's progress on instructional level activities.

However, the short-term objectives within the goal must be based on the student's present levels of performance and designed to assist the student with making progress towards achieving the goal. As the student achieves the short-term objectives, it is expected that they will be revised to move the student closer to achieving the goal to master the college and career ready standards around which the general curriculum is designed.

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In order to assist the student in achieving the short-term objectives, and ultimately the goal, the student must be provided with specially designed instruction that adapts the content, methodology, or delivery of instruction appropriate to the student's needs. This can include adapting the content of instructional materials, such as textbooks.

The IEP must be written in a manner that is clear with respect to the services to be provided in order to ensure that it is implemented in accordance with the IEP team's decisions (34 CFR §§300.320 and .323).

In making changes to an IEP after the annual IEP team meeting for a school year, the parent and the public agency may agree not to convene an IEP team meeting for the purposes of making those changes and instead may develop a written document to amend or modify the IEP. Otherwise, changes to the IEP must be made by the entire IEP team at an IEP team meeting (34 CFR §300.324).

Prior Written Notice

The public agency must provide parents with written notice prior to any proposal or refusal to initiate or change the identification, evaluation, or educational placement or the provision of a Free Appropriate Public Education (FAPE) to a student with a disability. This notice must include a description of the action, and explanation of why the public agency is taking or refusing to take the action, a description of the data used as a basis for the decision, and a description of other options that were considered (34 CFR §300.503).

DISCUSSION/CONCLUSIONS:

Allegation #2 **January 23, 2015 Revision of the Reading Comprehension and Vocabulary Goal**

In this case, the complainants allege that the annual IEP goal related to reading comprehension and vocabulary in effect since January 23, 2015 is not aligned with the student's present levels of academic achievement and functional performance because it requires her to demonstrate progress towards comprehension of 11th grade material without requiring the use of instructional level materials when her reading comprehension and vocabulary skills are well below grade level (Doc. bbb).

Based on the Findings of Facts #4 - #8, #10, #12, and #14, the MSDE finds that, while the IEP team decided that the student needs instruction on a modified curriculum, which is no longer permitted, the reading comprehension goal is aligned with the general curriculum because it measures the student's progress on the content standards for 11th grade English.

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Based on the Findings of Facts #4 - #8, #10, #12, and #14, the MSDE finds that the short-term objectives, which are part of the annual goal that has been in effect during the 2015-2016 school year and constitute a description of what the student needs to demonstrate in order to achieve the goal, describe activities that are designed to increase the student's skills from her present levels of performance.

Based on the Findings of Facts #5 and #8, the MSDE also finds that the IEP requires the provision of specially designed instruction, including content and assignments that are modified to reduce their length and complexity, in order to assist the student in making progress on the goal. Thus, this office finds that, while the goal is aligned with grade level content standards, the short-term objectives within the goal are designed to move the student towards mastery of those content standards from the student's present levels of performance. Therefore, this office does not find that a violation occurred with respect to the allegation.

Allegation #3

Prior Written Notice of the January 23, 2015 Revision of the Reading Comprehension and Vocabulary Goal

In this case, the complainants allege that they were not provided with proper written notice of the school system's decision to revise the reading comprehension and vocabulary goal developed on January 23, 2015 because no basis was given for requiring the student to demonstrate reading comprehension using grade level text instead of modified grade level text (Doc. bbb).

Based on the Findings of Facts #4 - #9 and #11, the MSDE finds that the written notice of the January 23, 2015 revision of the reading goal did not include all of the required content, including an explanation of the basis for requiring the student to make progress on comprehending grade level text instead of modified grade level text. Therefore, this office finds that a violation occurred with respect to the allegation.

Allegation #8

November 11, 2015 IEP Revisions

In this case, the complainants allege that the IEP was revised unilaterally by the school system staff inconsistent with the decisions made by the IEP team on November 11, 2015. Specifically, the complainants allege that the school system staff unilaterally decided that the goals would measure the student's progress on the 11th grade English curriculum despite the fact that the IEP team agreed to "instructional level goals." The complainants further allege that the school staff unilaterally decided to not include an independent living cooking schedule that had been determined by the IEP team or to document the agreement for compensatory services in the area of written language on the IEP (Doc. bbb).

Based on the Findings of Facts #13 - #16, the MSDE finds that, while a school staff member of the team indicated that the goals could be written at the student's instructional level, he also indicated that the goals could not be written in a manner that would change the content of the

English curriculum that the student would be required to master. These two statements do not evidence a clear decision that the goals would measure the student's progress on instructional level activities to the exclusion of measuring her progress towards mastery of 11th grade English content standards. In addition, based on the Findings of Facts #13-#16, #20, and #21, the MSDE finds that, while the written language goal that was proposed by the school system indicates that instructional level prompts will be used, it does not indicate that the student's progress will be measured on instructional level activities to the exclusion of measuring her progress towards mastery of English 11 content standards.

Based on the Findings of Facts #13-#25, #30, and #31, the MSDE finds that the parties have a practice of working on the wording of the IEP following IEP team meetings. Based on the Findings of Facts #14 - #25, the MSDE finds that the parties have been unable to agree to the wording of the goals following the November 11, 2015 IEP team meeting, and are, therefore, reconvening the IEP team to do so. As a result, this office does not find that the school system staff have made unilateral decisions or that a violation occurred with respect to this aspect of the allegation.

Based on the Findings of Facts #28 and 29, the MSDE finds that neither the IEP team, nor the parties outside of the IEP team, have reached an agreement on compensatory services for the lack of the provision of a sufficient amount of special education to assist the student with achieving the written language goal and to being progress monitoring on the goal. Therefore, this office does not find that a violation occurred with respect to this aspect of the allegation.

However, based on the Findings of Facts #26 and #27, the MSDE finds that the IEP was not revised to reflect the amount of time that the IEP team decided that the student would participate in cooking activities with a life skills class. Therefore, this office finds that the IEP is not written clearly in this respect and that a violation occurred with respect to this aspect of the allegation.

Allegation #9 Goals Based on Present Levels of Performance

In this case, the complainants allege that the annual IEP goals related to reading comprehension and vocabulary, as well as written language, which were developed following the November 11, 2015 IEP team meeting, are not aligned with the student's present levels of academic achievement and functional performance because they measure her progress towards performance at her grade level when her skills are well below grade level (Doc. bbb).

Based on the Findings of Facts #13 - #23, #30, and #31, the MSDE finds that the IEP team did not agree on the language of the annual goals and the parties have been unsuccessful in coming to an agreement to the wording following the meeting.

However, based on the Findings of Facts #8, #10, #20, and #21, the MSDE finds that the short-term objectives within the goals are designed to move the student towards mastery of grade

level content standards from the student's present levels of performance. Therefore, this office does not find that a violation occurred with respect to the allegation.

Allegation #15 **Provision of Special Education in Reading and Written Language**

In this case, the complainants assert that, on November 11, 2015, the IEP team agreed that the annual goals would measure the student's progress on instructional level activities, and not on her progress with mastering the 11th grade English curriculum. They allege that the student was not provided with special education instruction on instructional level activities, but have focused on grade level activities within the English 11 curriculum (Docs. bbb and yyy).

As stated above, based on the Findings of Facts #13 - #16, #20, and #21, the MSDE finds that, while a school staff member of the team indicated that the goals could be written at the student's instructional level, he also indicated that the goals could not be written in a manner that would change the content of the English curriculum for which the student would be required to master. These two statements do not evidence a clear decision that the goals would measure the student's progress on instructional level activities to the exclusion of measuring her progress towards mastery of grade level content standards. Therefore, this office does not find that a violation occurred with respect to the allegation.

ALLEGATIONS #4 AND #5 **REEVALUATION PROCEDURES AND RESPONSE TO REQUEST FOR AN IEE**

FINDINGS OF FACTS:

Intellectual Disability

35. On May 22, 2015 and June 19, 2015, a reevaluation was conducted. The IEP team considered the results of private cognitive assessments conducted in 2013 as indicated below.
- The report of a private psychological assessment conducted on April 24, 2013, which states that a Wechsler Intelligence Scale for Children-Fourth Edition (WISC-IV) was administered, but that the student was unable to complete the necessary tasks to obtain a full scale intelligence quotient (FSIQ). It also states that while the student "appeared to struggle with understanding some of the task directions," she was capable of doing many of the tests and "displayed relative strengths in similarities, working memory, and basic vocabulary" (Doc. a).
 - The report of the April 24, 2013 assessment further states that a Test of Nonverbal Intelligence (TONI-4) was administered, which requires no reading, writing,

speaking, or listening on the part of the test taker, but only a point, nod, or symbolic gesture to indicate response choices. On this test, the student's FSIQ score was 77, which fell in the "borderline" range of intellectual functioning (Doc. a).

- The report of a private neuropsychological evaluation conducted in May 2013, which states that the student's FSIQ score was 46, which fell in the "extremely low" range on the Leiter International Performance Scale-Revised (Leiter-R). The report states that while the student scored in the "borderline" range in the area of spatial visualization (scoring a 72), she scored in the "extremely low" range in the remaining brief IQ and fluid reasoning composites (scoring a 50 and 42 respectively) (Doc. b).
36. The form used by the IEP team in determining whether a student meets the criteria for identification as a student with an Intellectual Disability under the IDEA requires the IEP team to first determine whether the student exhibits "significantly sub average cognitive functioning." In making this decision, the form states that "if a discrepancy between index/composite scores is statistically significant and meaningful according to the testing manual of the standardized assessment utilized, the FSIQ score should not be considered as a valid measure of the student's intellectual potential." It further states that, "in the event of such a discrepancy, the higher score should be considered as the best measure of the student's intellectual potential" (Doc. gggg).
37. A review of the audio recording of the June 19, 2015 meeting reflects that some of the school-based members of the team decided that the student exhibits "significantly sub average functioning demonstrated by comprehensive measures of verbal and nonverbal reasoning at or below two standard deviations below the mean on an individually administered standardized measure of intelligence." The complainants disagreed and expressed concern that the team was basing the decision on the FSIQ score from the Leiter-R instead of the highest subtest score on that tool despite the fact that there were discrepancies among the student's scores on the subtests. The school-based psychologist responded that they were using scores from the entire test, including all of the subtest scores (Doc. v and review of the audio recording of the meeting of the June 19, 2015 IEP team meeting).
38. A review of the audio recording of the June 19, 2015 meeting also reflects that the student's mother indicated that while she agreed that the student has an intellectual disability, she disagrees that it is a significant intellectual disability. The school-based psychologist explained that finding "significantly sub average cognitive functioning" is not the same as finding that a student has a significant intellectual disability. The school-based psychologist reported that "significantly sub average cognitive functioning" is demonstrated if a student scores near or below two standard deviations from the mean on

an Intelligence Quotient (IQ) test. The school-based psychologist reported that the highest subtest score of 72 from the Leiter-R was two standard deviations below the mean, factoring in a three to five point variation (Doc. v and review of the audio recording of the meeting of the June 19, 2015 IEP team meeting).

39. A review of the audio recording of the June 19, 2015 meeting also reflects that the student's mother also argued that the team should rely on the FSIQ from the TONI-4. The school-based psychologist explained that this test could not be considered in isolation because it is a relatively quick test that samples one area of intellectual ability, and the Leiter-R covers a wider range of abilities (Doc. v and review of the audio recording of the meeting of the June 19, 2015 IEP team meeting).
40. A review of the audio recording of the June 19, 2015 meeting further reflects that the student's mother argued that the team should consider the student's classroom performance when making the determination. The student's social studies teacher explained that this would not be an accurate representation of the student's ability because of the significant assistance that is provided to her in achieving that performance (Doc. v and review of the audio recording of the meeting of the June 19, 2015 IEP team meeting).
41. The documentation of the June 19, 2015 IEP team meeting states that the complainants expressed disagreement with the team's decision that the data reflected "significantly sub average cognitive functioning," based on all of the scores obtained from the testing (Docs. t and gggg).

INDEPENDENT EDUCATIONAL EVALUATION (IEE)

42. At the June 19, 2015 IEP team meeting, the IEP team discussed that the student had previously been identified with an Intellectual Disability under the IDEA, but that subsequently, the assessments of the student's functional/adaptive skills were challenged by the complainants and removed from the student's educational record. The IEP team recommended that an assessment in the area of functional/adaptive performance be conducted, but the complainants refused to provide written consent. Therefore, the IEP team decided that there was insufficient data on adaptive/functional behavior to support identification of the student with an Intellectual Disability under the IDEA⁵ (Docs. p, t, and q).

⁵ The private cognitive assessments obtained by the complainants in May and August 2013 include scores on adaptive behavior that were obtained solely from information provided by the complainants, and the school-based members of the team indicated that the information was insufficient without input from the school staff (Docs. a and b).

43. The audio recording of the reevaluation meeting reflects that, following the complainants' refusal to provide consent to an assessment in the area of functional/adaptive performance, the student's mother requested an independent assessment of the student's adaptive functioning, which was rejected (Doc. v).
44. The only cognitive assessments in the student's educational record, which include results of testing in the area of adaptive functioning, are those that were obtained privately by the complainants in May and August 2013 (Docs. a and b).

Functional Vision Assessment

45. There is no documentation that the team considered the results of a functional vision assessment conducted on February 9, 2015 during the reevaluation (Doc. t).

DISCUSSION/CONCLUSIONS:

Allegation #4

Reevaluation Procedures

When conducting a reevaluation, the public agency must ensure that a variety of assessment tools and strategies are used to gather relevant functional, developmental, and academic information. The public agency must not use any single measure or assessment as the sole criterion for determining eligibility and the student's needs (34 CFR §300.304).

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

In general, the term "intellectual disability" is used when a person has certain limitations in mental function and skills such as communicating, taking care of him or herself, and social skills, which cause a child to learn and develop more slowly than a typical child. Intellectual functioning, or Intelligence Quotient (IQ), is usually measured by an IQ test. The average score is 100. Those scoring below 70 to 75 on an IQ test are thought to have an intellectual disability (<http://eclkc.ohs.acf.hhs.gov>).

Under the IDEA, a student may be identified with Mental Retardation (referred to as an Intellectual Disability under the COMAR) if the student has "significantly sub average general intellectual functioning," or an "intellectual disability," existing concurrently with deficits in adaptive behavior and manifested during the developmental period, that adversely affects a student's educational performance (34 CFR §300.8).

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In this case, the complainants allege that the IEP team “failed to consider the high score on the non-verbal test” (TONI-4) and did not follow its own procedures when determining that the student has "significant sub average general intellectual functioning," or an "intellectual disability" (Doc. bbb).

Based on the Findings of Facts #35 - #41, the MSDE finds that the documentation and audio recording of the meeting do not support the allegation. Based on these Findings of Facts, the MSDE finds that the team considered all of the subtests, including the highest score on the Leiter-R, and did not rely solely on the FSIQ scores. Based on those Findings of Facts, the MSDE further finds that the data supports the team's determination that the student has "significantly sub average general intellectual functioning," or an "intellectual disability." Therefore, this office does not find that a violation occurred with respect to this aspect of the allegation.

The complainants also allege that the IEP team did not consider the results of the functional vision assessment when conducting the reevaluation (Complaint). Based on the Finding of Fact #45, the MSDE finds that a violation occurred with respect to this aspect of the allegation.

Notwithstanding the violation, based on the Finding of Fact #3, the MSDE finds that the IEP team subsequently considered the results of the functional vision assessment. However, as stated in Allegation #1 above, this office finds that there was a delay in considering the results of the assessment.

Allegation #5

Response to Request for an IEE

Parents have the right to request an IEE at public expense each time the public agency conducts an evaluation with which the parent disagrees. Upon receipt of a request from the parent, the public agency must, without unnecessary delay, either ensure that the IEE is provided or file a due process complaint to request a hearing to demonstrate that its evaluation is appropriate (34 CFR §300.502).

In this case, the complainants allege that the school system did not ensure that an IEE in the area of adaptive behavior was provided at public expense or that they filed a due process complaint to request a hearing in order to defend the adaptive behavior assessment that they had conducted (Doc. bbb).

Based on the Findings of Facts #42 - #44, the MSDE finds that there is no public agency evaluation of the student’s adaptive behavior with which the complainants disagree, thus, there is no entitlement to an IEE at public expense. Therefore, this office does not find that a violation occurred with respect to the allegation.

ALLEGATION #6

**RESPONSE TO REQUESTS TO AMEND THE
RECORD**

FINDINGS OF FACTS:

January 2015 Response

46. On January 19, 2015, the school system staff responded to the complainants' request to remove the results of a functional/adaptive behavior assessment from the student's educational record. In that response, the school system staff denied the request and informed the complainants of the right to appeal the decision to the Superintendent of the CCPS (Doc. j).
47. There is documentation that the complainants appealed the decision to both the Superintendent of the CCPS, and subsequently to the CCPS Board of Education, and was successful in having the assessment removed from the student's educational record (Doc. p).

July 2015 Response

48. Following the reevaluation that was completed on June 19, 2015, the complainants requested amendment of the written summary of the meeting (Doc. w).
49. On July 21, 2015, the school staff agreed to make some, but not all of the requested revisions. However, the school staff did not inform the complainants of their right to request a hearing to contest the record (Doc. x).
50. On December 22, 2015, the complainants informed the school staff that they had reviewed the *Parent's Rights Handbook* and were requesting a hearing in order to dispute the content of the record (Doc. yy).
51. On February 5, 2016, the school staff agreed to amend the record consistent with the complainants' request (Doc. oo).

December 2015 Response

52. On December 9, 2015, the complainants requested amendment of the written summary of the IEP team meeting that was held on November 11, 2015 (Doc. uu).
53. On December 11, 2015, the school staff suggested that the IEP team reconvene to discuss the concerns raised by the complainants (Doc. vv).

54. On December 13, 2015, the complainants requested amendment of the finalized IEP that was developed following the November 11, 2015 IEP team meeting, and indicated that they did not agree to reconvene the IEP team for fear that the decisions made on November 11, 2015, which were not accurately reflected in the documentation of the meeting, would be revisited (Doc. ww).
55. On December 19 and 22, 2015, the complainants reiterated the request for amendment of the record (Doc. yy).
56. On December 23, 2015, the school staff indicated to the complainants that the audio recording of the meeting would be reviewed in order to respond to the request (Doc. aaa).
57. On February 12, 2016, the school staff provided the complainants with correspondence indicating that they would make some, but not all of the requested revisions, and informed them of their right to request a hearing to contest the record (Doc. rrr).

Response to Request to Amend Progress Report

58. On December 23, 2015, the school staff provided the complainants with a report of the student's progress towards achievement of the annual IEP goals (Doc. aaa).
59. On January 10 and 17, 2016, the complainants requested that the progress reports be "corrected" (Docs. ddd and hhh).
60. On February 4, 2016, the student's mother met with the school staff to provide specific information about the requests for amendment of the record (Doc. nnn).
61. On February 12, 2016, the school staff provided the complainants with correspondence indicating that they would not make the requested revisions, and informed them of their right to request a hearing to contest the record (Doc. rrr).

DISCUSSION/CONCLUSIONS:

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

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

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

Based on the Findings of Facts #46 - #61, the MSDE finds that the CCPS followed proper procedures when responding to all of the complainants' requests with the exception of the request for amendment of the written summary of the June 19, 2015 IEP team meeting. Based on the Findings of Facts #48 - #50, the MSDE finds that the school system did not inform the complainants of their right to request a hearing when it rejected some of the requested changes to the written summary of the June 19, 2015 IEP team meeting. Based on the Finding of Fact #51, the MSDE finds that while the school system eventually agreed to all of the requested amendments, it did not do so in a timely manner. Therefore, this office finds that a violation occurred.

Notwithstanding the violation, based on the Findings of Facts #47 and #50, the MSDE finds that the complainants were aware of their right to request a hearing to contest the record. Therefore, this office finds that the violation did not impact the complainants' ability to exercise their rights under the IDEA.

ALLEGATION #7

WRITTEN NOTICE OF THE JUNE 19, 2015 AND NOVEMBER 11, 2015 IEP TEAM MEETINGS

FINDINGS OF FACTS:

June 19, 2015 IEP Team Meeting

62. On June 11, 2015, the school staff provided the complainants with written notice of the IEP team meeting to be held on June 19, 2015⁶ (Doc. s).
63. The student's mother signed the written notice indicating that the meeting was scheduled at a mutually agreed upon time, and that it was scheduled with less than ten days written notice in order to expedite the meeting (Doc. t).
64. The complainants participated in the June 19, 2015 IEP team meeting (Doc. v).

⁶ This meeting was held to complete a reevaluation that began on May 22, 2015 (Docs. q and t).

November 11, 2015 IEP Team Meeting

65. On Friday, October 30, 2015, the school staff scheduled an IEP team meeting for November 11, 2015. The meeting date was selected at the request of the student's mother because it was a holiday on which she was not required to work (Docs. dd, ee, and ggg).
66. On Tuesday, November 3, 2015, the school staff mailed written notice of the IEP team meeting scheduled for November 11, 2015 to the complainants, which was not received by the complainants until Friday, November 6, 2015 (Docs. ee and ff).
67. The complainants participated in the November 11, 2015 IEP team meeting (Doc. ee).

DISCUSSION/CONCLUSIONS:

The school system is required to take steps to ensure that a parent has the opportunity to participate in IEP team meetings. This includes notifying the parents of the meeting early enough to ensure that they will have an opportunity to attend; and scheduling the meeting at a mutually agreed on time and place (34 CFR §300.322).

In Maryland, in order to ensure that parents have sufficient notice of an IEP team meeting, public agencies are required to provide written notice of the meeting to parents at least ten (10) days in advance of the meeting, unless an expedited meeting is being conducted to:

- Address disciplinary issues;
- Determine the placement of the student with a disability not currently receiving educational services; or
- Meet other urgent needs of the student to ensure the provision of a Free Appropriate Public Education (FAPE) (COMAR 13A.05.01.07D).

However, the COMAR does not prohibit parties from agreeing to a mutually convenient date that would not permit written notice to be provided at least ten (10) days in advance of the meeting in order to expedite the meeting even when one of the above-referenced situations does not apply (COMAR 13A.05.01.07D).

Based on the Findings of Facts #62 - #67, the MSDE finds that while the complainants were not provided with written notice within the timeframe required by the COMAR, the meetings were scheduled at a mutually convenient time and the complainants participated in the meetings. Therefore, the MSDE does not find that a violation occurred with respect to the allegation.

ALLEGATION #10

**ADDRESSING THE STUDENT'S TRAVEL TRAINING
NEEDS**

FINDINGS OF FACTS:

68. At the November 11, 2015 IEP team meeting, the team considered the results of an orientation and mobility assessment. Functional travel skills needs were identified in the assessment, including the development of information gathering and management skills, refining strategies for soliciting assistance and problem solving in community environments, basic consumer skills, and improving an understanding of how traffic moves based on established rules of the road (Docs. ee and ii)
69. The assessment report includes recommendations for “systematic introductions to new places,” provision of problem solving and decision making opportunities in the environments where the student will be traveling, as well as opportunities to complete tasks in the community that involve pre-trip planning, travel to and from a location, soliciting directional information and completing a multi-item transaction. It also includes recommendations to provide the student with opportunities for crossing streets, where she can be encouraged to identify safe places to cross, and asked to predict what vehicles may do next in order to improve her understanding of the importance of these things to her safety as a pedestrian (Docs. ee and ii).
70. However, the audio recording of the IEP team meeting reflects that the evaluator reported that the student’s needs did not arise out of problems with the student’s vision, but from “a lack of experience and training.” The team discussed that the type of instruction the student needs is often provided as a post-secondary school service through agencies such as the Maryland Department of Rehabilitation Services (DORS). While the student’s mother agreed to investigate whether the services could be provided by DORS, she requested that the team consider how the services can be worked into the student’s school schedule as a transition service. However, there is no evidence that the team has considered the request (Doc. ee).

DISCUSSION/CONCLUSIONS:

In order to provide a student with a FAPE, the public agency must ensure that an IEP is developed that addresses all of the special education and related services needs that arise out of the student’s disability that are identified in the evaluation data, whether or not they are commonly linked to the identified disability. 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 (34 CFR §§300.101, .304, .320, and .324).

In this case, the complainants allege that the IEP does not address the need for travel training that was identified through an orientation and mobility assessment that was considered by the IEP team on November 11, 2015 (Doc.).

Based on the Findings of Facts #68 - #70, the MSDE finds that the IEP team has not considered the complainants' concern that travel training be included in the IEP. Therefore, this office finds that a violation has occurred.

ALLEGATION #11

PROVISION OF THE IEP FOLLOWING THE NOVEMBER 11, 2015 IEP TEAM MEETING

FINDINGS OF FACTS:

71. On November 18 and 20, 2015, the school staff sent the complainants an IEP that was marked "draft"⁷ (Doc. nn).
72. On December 3, 2015, the complainants received an IEP that is labeled "finalized" (Doc. bbb and interview with the mother).
73. There is documentation that, since the November 11, 2015 IEP team meeting, the parties have been attempting to work out language for the IEP that is mutually agreeable, and that since they have been unsuccessful, another IEP team meeting was scheduled for March 31, 2016, which has been rescheduled to April 22, 2015 to ensure needed participants can attend (Docs. nn, oo, rr, uu, vv, kkk, nnn, and vvv).

DISCUSSION/CONCLUSIONS:

The public agency must ensure that parents are provided with a copy of the IEP within five (5) business days of the date of an IEP team meeting. If the IEP has not been finalized, a draft IEP must be provided (COMAR 13A.05.01.07 and Md. Code Ann., Educ., §8-405).

Based on the Findings of Facts #17, #19, and #71 - #73, the MSDE finds that the parties have been unsuccessful in agreeing to a finalized IEP, but that proposed language for the IEP has been shared between the parties since November 18, 2015. Therefore, this office finds no violation with respect to the timelines for provision of the IEP.

⁷ The email correspondence from the school staff to the student's mother, dated November 18, 2015, forwards a draft IEP that was reported to reflect the changes made on November 11, 2015. The correspondence explains that the school staff were unable to complete the services section of the draft IEP because the on-line IEP system was malfunctioning and would not permit them to complete the draft on November 18, 2015. The email correspondence between the parties, dated November 20, 2015, reflects that the remaining services section was provided to the complainants at that time (Doc. oo).

**ALLEGATIONS #12, #13D, AND #13E ASSISTIVE TECHNOLOGY, GRAPHIC
ORGANIZERS, AND OTHER SUPPORTS
FOR WRITTEN WORK**

FINDINGS OF FACTS:

IEP Requirements - Assistive Technology

74. The IEP states that the student requires the following:

Dedicated computer with specialized software, such as a word processor with formatting, grammar and spell check features, text to speech software, text prediction software, and concept mapping software. [The student] also requires dedicated access to a tablet with specialized software including voice recognition.

The IEP also states that the student “is currently being provided with a tablet (iPad) with similar apps to the programs installed on the laptop” and that “she has mainly used the iPad for all of her needs” (Docs. k, u, y, and jj).

IEP Requirements - Graphic Organizers and Other Supports for Written Work

75. The IEP includes a goal for the student to use graphic organizers to provide clear and complete sentences “as evidenced by writing samples up to a paragraph in length that includes a clear beginning, middle, and end.” The short-term objectives within the goal require the student to: (a) identify the appropriate graphic organizer for writing purposes; (b) restate questions in order to respond to comprehension questions; (c) add details to a written paragraph; (d) participate in organizing her written response through verbal rehearsal and by selecting the order for the sentences once they have been composed from a graphic organizer; (e) write a complete topic sentence with verbal prompting; and (f) write a clear and concise closing statement to a paragraph (Docs. k, u, y, and jj).
76. The IEP requires the use of graphic organizers “as defined by [the National Center on] Accessible Educational Materials”⁸ The IEP also requires other visual cues to assist the student with understanding concepts as well as note-taking support such as cloze (fill in

⁸ Formerly known as the National Center on Accessible Instructional Materials (<http://aim.cast.org>).

the blank) outlines or graphic organizers to minimize writing yet encourage engagement in learning. The IEP states the following: “Initially the adult may need to complete the graphic organizer with key information. Over time [the student] can learn to complete them herself with decreasing amounts of support” (Docs. y and jj).

January 23, 2015 IEP Team Meeting

77. The audio recording of the January 23, 2015 IEP team meeting reflects that the student’s mother expressed concerns about whether the student is being provided with appropriate supports, such as graphic organizers, in English. A school-based member of the team reported having observed that the student is provided with prompts to assist with completing written work, but that the student does not understand and is unable to respond to the prompts. The student’s mother reported that the student is a visual learner with expressive language needs, making it difficult for her to get her thoughts down on paper without the use of appropriate graphic organizers, which is what was causing the student’s frustration. The team discussed that the 11th grade English curriculum requires inferential reasoning, with which the student was struggling, which was causing her frustration. The student’s mother indicated that until the work is modified down to the level where the student can work on it independently, as has been done in the past, she will continue to experience frustration (Review of the audio recording of the January 23, 2015 IEP team meeting).
78. The audio recording of the January 23, 2015 IEP team meeting further reflects that, while the student’s English teachers were not participants in the meeting, the public agency representative agreed that the team would conclude that the student did not have adequate graphic organizers for written language and that moving forward she would be provided with them. The student’s mother reported that, while she prefers graphic organizers using technology, she has a binder of “low tech” graphic organizers that could be used (Doc. l and review of the audio recording of the January 23, 2015 IEP team meeting).

September 3, 2015 IEP Team Meeting

79. The audio recording of the September 3, 2015 IEP team meeting reflects that the student’s mother requested that the school staff ensure that the student is provided with copies of teacher notes because, even though the student is using sentence starters and cloze outlines to take notes, she often does not complete the sentences with correct information. Although the student’s English teachers did not participate in the meeting, language requiring the use of graphic organizers as defined by the National Center on Accessible Educational Materials was added to the IEP in response to the complainants’ continued concerns about the types of graphic organizers being used in English (Doc. y and review of the audio recording of the September 3, 2015 IEP team meeting).

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80. The student has access to a laptop that includes Inspiration⁹ and Microsoft Word¹⁰ software. However, she has prefers to use her iPad tablet. At the September 3, 2015 IEP team meeting, the team discussed that, this year, not all of the student's work can be completed using an iPad. For example, using an iPad, the student is unable to take a test using a word bank because the word bank is not visible on the same page. The school staff report that in addition to using her iPad, the student works with the special education English teacher on teacher's laptop during the time that she works with the student instead of having the student use the iPad and separate laptop device that was assigned to her (Review of the audio recording of the September 3, 2015 IEP team meeting).
81. The audio recording of the September 3, 2015 IEP team meeting reflects that the team discussed that the teachers had been directed to send assignments electronically to the student's iPad. The student's mother indicated that she did not wish to have to review electronic mail (email) messages to look for the student's homework assignments each day. The team members, which did not include the student's English teachers, indicated that they were not sure whether there would be folders for each class in which the material would be maintained, but that assignments would be organized on the iPad under one of the applications such as Pages.¹¹ The team also discussed that the school staff had not yet worked with the student on learning how to move assignments from email into the other applications on the iPad. While the team discussed working with the student on learning how to do so, it did not discuss how the work assignments that were emailed to the student would be organized on the iPad until the student learned how to do so (Review of the audio recording of the September 3, 2015 IEP team meeting).

November 11, 2015 IEP Team Meeting

82. The audio recording of the November 11, 2015 IEP team meeting reflects that the student's mother expressed continued concern with the manner in which supports were being provided to assist the student with written work in English. Neither the student's English teacher, nor her special education English teacher participated on the November 11, 2015 IEP team. However, the audio recording indicates that the public agency representative agreed that the sample written language support that was shared with the team by the student's mother would not constitute a graphic organizer needed to assist the student with completing her written work, and agreed to meet with the student's English teacher about the matter. The student's mother indicated that the special education

⁹ This is software that assists student with development and organization of ideas (<http://www.inspiration.com>).

¹⁰ This is word processing software (www.microsoftstore.com).

¹¹ This application includes word processing with word prediction software (www.apple.com).

English teacher informed her that the student does not like to use the graphic organizers using technology, and the student's mother indicated that a "low tech" handwritten graphic organizers could be used (Doc. ll and review of the audio recording of the November 11, 2015 IEP team meeting).

Follow Up to the November 11, 2015 IEP Team Meeting

83. On November 18, 2015, the student's mother sent correspondence to the school principal requesting assistance with ensuring that the student's English teacher provides the written language supports, including the types of graphic organizers required by the IEP (Doc. oo).
84. On November 20, 2015, the principal responded that, when he spoke with the English teacher and the special education English teacher about the mother's concerns, he observed that a graphic organizer was being with the student. He explained that the two English teachers work closely together in adapting the content or delivery of instruction and that the special education English teacher works with the student in reading selections and circling/underlining key parts for her to use in developing a written essay and in coming up with ways to make her sentences complete. He further indicated that the student has access to the CoWriter program¹² on her iPad to assist her when developing a written essay (Doc. oo).
85. On November 23, 2015, the school staff member who served as the public agency representative at the November 11, 2015 IEP team meeting sent correspondence to the student's mother. In that correspondence, he indicated that the English teacher reported that the sample support that the mother provided to the team at the November 11, 2015 meeting was not intended to be a graphic organizer, but was the actual assignment given to the students. In that correspondence, the school staff member stated that he spoke with the student's English teacher about the use of graphic organizers, and that with the exception of the provision of an adapted English textbook, "when looking back on all the materials that [the student's special education English teacher] has kept, it can be said that [the student's] IEP is being followed in [the English teacher's] class" (Docs. ll and qq).

IEP Implementation

86. The National Center on Accessible Educational Materials defines a graphic organizer as "a visual and graphic display that depicts the relationships between facts, terms, and or ideas within a learning task," and states that "graphic organizers come in many varieties."

¹² This application includes word prediction and text-to-speech features (<http://don.johnston.com>).

Examples on their website include a “series of events chain” that uses rows of rectangles with arrows pointing down between them, with the top rectangle containing an initiating event, and the bottom containing a final event. Another example is a thematic map that contains a diamond in the center with a main idea and circles on each side containing subordinate ideas, and rectangles along each side containing support detail (aem.cast.org).

87. A review of copies of four written language assignments that the student has worked on during the 2015-2016 school year reflects the following:
- The first assignment involves analysis of a painting entitled “Class of 67,” which required the student to provide written answers to questions posed. The documentation reflects that the student was provided with a graphic organizer that placed each question to be answered in a rectangle and included a rectangle beside each of these in which sentence starters and cloze strategies were placed to assist her in developing the answers to the questions in each rectangle. It also reflects that she was prompted to add details to her answers, but that she was unable to do so for all for all of the questions and that her responses did not reflect an accurate analysis of the information provided.
 - The second assignment required that the student provide an essay that argues a position about whether to have year-round school in the United States after reading information about the debate over the issue. The student was provided with underlining and circling of key words in the text to be read. She was also provided with handwritten visuals of the traditional school year and a year-round school year. She was also provided with a graphic organizer that placed one side of the argument inside of a rectangle and beneath that rectangle was placed another rectangle in which the student was to insert information to support the argument. This strategy was not successful. Therefore, a graphic organizer, entitled a “word web,” was used. This graphic organizer contained a series of ovals connected by lines, with the student’s position to be inserted in the middle oval, each reason for the position to be placed in ovals to the left of the center oval, and the evidence for each reason to be placed in ovals on the right side of the center oval. The student was able to complete information about her position, but the information placed in the reason and evidence ovals were not related to the topic. The student was then prompted to use a model to transfer the information from the word web to a paragraph format, which was unsuccessful.
 - The third assignment required that the student to develop an essay about the difference in perspectives between the need to maintain tradition and the need to respect human rights after reading information about the different perspectives. The student was provided with underlining and circling of key words in the text to

be read and a visual. She was provided with an outline of information about the two perspectives covered in the reading material and a graphic organizer containing a box at the top for a topic sentence, followed by boxes underneath for a description of each article read and one for a description of the picture provided, followed by a box for a concluding sentence. The information from the boxes was to be placed into paragraphs to form an essay. The student produced one paragraph by placing the information from each box into sequential sentences, but was unable to include in the paragraph the analysis of the information that was required, even after being provided with prompting to make revisions.

- The fourth assignment, which was due at the end of February 2016, required the student to develop an essay about a trip she took to Arizona. The student was provided with a graphic organizer containing ovals on the left of each action taken, with lines connecting to ovals on the right containing information about her feelings regarding each action. The student was also provided with a PowerPoint of a plot diagram writing template, and a vocabulary list of tone words and a visual for each category of words. She was able to produce several paragraphs telling a story about her trip, which was edited by her peers (Doc. zzz and review of the student's class work in English class).
88. On December 18, 2015, a report was made of the student's progress towards achievement of the goal to use graphic organizers to provide clear and complete sentences. The report states that the student is not making sufficient progress on the goal because she requires "extended prompting with multiple reviews to add details to her organizers," and that "following the completion of a graphic organizer, [the student] does not accept help in any revisions" (Doc. xx).
89. The speech/language provider's service logs include the following with respect to her work with the student in English:
- On September 11, 2015, it was noted that the student "was not always cooperative and was a bit resistant when asked to seek clarification for the completion of sentence of patterns."
 - On October 2, 2015, it was noted that the student "needed lots of scaffolding to complete slotting sentences for Sentence Pattern exercise." The log indicates that notes were made on a separate sheet and articles were separated in order to assist the student with identifying nouns, and that the student had "a lot of difficulty."
 - On October 23, 2015, it was noted that the student demonstrated "frustration" while completing an exercise on punctuation and that she "needed a lot of scaffolding" to complete the work.

- On November 20, 2015, it was noted that the student “worked on sentences, but refused to make correction when redirected to the text and the questions asked.”
 - On December 4, 2015, it was noted that the student worked on sentence combining in groups and that “it was difficult to come up with one sentence at first, but with prompting she was able to construct two sentences” (Docs. hhhh, iiii, and kkkk).
90. A review of a laptop maintained by the student's special education English teacher reflects that documents are transferred between the student's iPad and the teacher's laptop, which the student works on with the special education teacher. While the word processing software on the student's iPad does not have a grammar check feature, the word processing software on the laptop at the school does have a grammar check feature. The school staff report that they do not want the student to have access to grammar and spelling features on the iPad because of the need to see her work without the use of such technology given that she has an IEP goal to improve her skills in this area (Docs. fff, ooo, review of the laptop, and interview with the school staff).
91. There is documentation between the student's mother and the school staff in which the mother has requested clarification of where to find writing assignments and graphic organizers on the student's iPad. There is correspondence that reflects that the student's mother expected all documents to be maintained on the iPad under folders for each class, or under Inspiration, or CoWriter on the student's iPad. In the correspondence, the student's mother indicated that she was unaware that the student was also using a laptop. On February 19, 2016, the special education teacher informed the student's mother that the student opens her emails and files the documents on the Pages application (Docs. ll, sss, tt, and review of the iPad).
92. On March 8, 2016, the student's mother expressed concern to the student's special education English teacher about having the student use an Inspiration graphic organizer application on a summative assessment prior to having had her practice using the software. The student's mother indicated that this is inconsistent with the *Maryland IEP Process Guide* that states that accommodations must not be introduced for the first time during the testing of the student. In response, the teacher indicated that it is her belief that, because the student has used other graphic organizing applications, it was appropriate to have her use Inspiration software to do so on the assessment (Doc. cccc).

DISCUSSION/CONCLUSIONS:

The public agency must ensure that students are provided with the special education services required by the IEP (34 CFR §§300.101 and .323).

As stated above, 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 (34 CFR §§300.101, .304, .320, and .324).

In this case, the complainants allege that the student is not making sufficient progress towards achieving the written mechanics goal because she is not being provided with the assistive technology software, including graphic organizing applications and other supports, as required by the IEP. They point to the fact that there is a lack of written paragraphs that have resulted from the supports that were provided, with the exception of the recent assignment that was due in February 2016 (Docs. bbb, vvv, and bbbb).

The complainants assert that neither the student's iPad nor the special education teacher's laptop contain samples of the use of the types of graphic organizers required by the IEP. While the complainants acknowledge that the IEP team agreed that the graphic organizers could be handwritten, they assert that the reason why the IEP requires that the student have access to an electronic graphic organizing program is that the team intended for them to be provided in an electronic format in order to meet the student's needs (Docs. bbb, vvv, and bbbb).

Based on the Findings of Facts #74 - #92, the MSDE finds that there is evidence that the student is being provided with the assistive technology, graphic organizers, and other supports for written language required by the IEP. Therefore, this office does not find a violation with respect to the allegation.

However, based on those Findings of Facts, the MSDE also finds that the student is struggling to complete written work involving inference and analysis, which is required by 11th grade English, even with the provision of those supports, and that the IEP team has not considered the complainants' continued concerns about the manner in which they are being provided. Therefore, this office finds that a violation occurred.

ALLEGATION #13A

REQUIRED AMOUNT OF SPEECH SERVICES

FINDINGS OF FACTS:

93. The IEP requires that the student be provided with two thirty minute sessions of speech/language therapy per week inside the general education classroom. It also requires the provision of one thirty minute session per week outside of the general education classroom, and states that this is provided when the student is scheduled for her "flex period"¹³ (Docs. k, u, y, and jj).

¹³ A period is built into students' schedules that they can use in a flexible manner to work on developing a deeper understanding of class materials and remediate assignments that fall below expectations (www.carrollk12.org).

94. The IEP also requires a home-school communication system between the student's teachers and parents through the use of an agenda, communication log, email, etc. The IEP in effect since September 3, 2015 explains that special events, such as assemblies or health room visits, should be recorded in an agenda book or email so that the student's parents can discuss these events with the student at home. It states that, in addition, "push-in services provided are to be recorded in the agenda by the special education teacher." A review of the audio recording of the September 3, 2015 IEP team meeting reflects that the team did not discuss whether "push-in services"¹⁴ were to include the speech services provided in the general education classroom (Docs. k, u, y, jj, and review of the audio recording of the September 3, 2015 IEP team meeting).
95. A review of the speech/language provider's service logs reflects that services began on September 4, 2015. The service logs indicate that the student has not consistently been provided with speech/language services in accordance with the IEP, and that some, but not all of the missed sessions, were made up. The communication log mentions only a few of the sessions that are indicated in the service provider's log (Docs hhhh, iiii, and kkkk).
96. The information in the speech/language provider's service logs do always contain information that is consistent with information inserted on the Flex Tracker (Docs. iiii and llll).
97. The student's agenda does not contain information about all of the speech sessions that are noted in the service provider's logs, and those mentioned in the student's agenda (Docs. hhhh, iiii, and mmmm).
98. The speech/language provider reports that the electronic system for creating service logs is new and that she is working to ensure that she completes information correctly in the system. She further reports that she is reviewing her session notes and correcting errors in the reports (Report of the speech/language service provider).

DISCUSSION/CONCLUSIONS:

As stated above, the public agency must ensure that students are provided with the special education services required by the IEP (34 CFR §§300.101, and .323).

¹⁴ A review of the audio recording of the September 3, 2015 IEP team meeting reflects that the special education instruction provided inside the general education classroom were referred to by team members as "push-in services" (Review of the audio recording of the September 3, 2015 IEP team meeting).

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The public agency is generally responsible for making alternative arrangements to provide the services required by the IEP when other school-related activities make either the student or the service provider unavailable during the time that the service is regularly scheduled. The public agency is not obligated to do so when the student is unavailable for other reasons such as school closure or the student's absence from school (*Letter to Balkman*, United States Department of Education, Office of Special Education Programs, 23 IDELR 646, April 10, 1995).

In this case, the complainants allege that the student has not been provided with the amount of speech/language therapy required by the IEP either inside the general education classroom or in a separate special education class (Doc. bbb).

Based on the Findings of Facts #93 - #98, the MSDE finds that there is no documentation that the speech/language services have consistently been provided as required by the IEP. Therefore, this office finds that a violation occurred.

ALLEGATION #13B

REQUIRED AMOUNT OF PHYSICAL EDUCATION SERVICES

FINDINGS OF FACTS:

99. The IEP, dated January 23, 2015, includes an annual goal for the student to improve strength and endurance. The goal reflects that it will be addressed in the student's physical education class and during dance activities, and that when she is not enrolled in either physical education or dance, it will be addressed one time every two weeks during the "flex period" (Doc. k).
100. The audio recording of the January 23, 2015 IEP team meeting reflects that prior to the meeting, the IEP contained clarification that the physical education goal would be addressed unless there was a conflict with the student's academic schedule. At the January 23, 2015 IEP team meeting, the student's mother asked that the language about the impact of the student's schedule be removed. The school staff agreed to do so because the student's current schedule allowed for both academics and the physical education goal to be addressed (Review of the audio recording of the January 23, 2015 IEP team meeting).
101. The IEP states that reports will be made on the student's progress towards achieving the annual goals on a quarterly basis. On October 6, 2015, a report of the student's progress towards achievement of the goal was made, which states that the goal was "not yet introduced" (Docs. k, u, y, bb, and jj).

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102. At the IEP team meeting held on November 11, 2015, the IEP team discussed revising the physical education goal to focus on improving the student's knowledge of lifetime fitness. The team discussed that the physical education goal had only been addressed when the student was enrolled in a physical education or extracurricular activity such as dance class, and that there was not enough time to address the goal during the "flex period." The school-based members of the team suggested that the student be enrolled in a physical education class throughout the school year to ensure that the goal is consistently addressed, but the student's mother expressed concern that there was not enough time in the student's class schedule to do this. A review of the audio recording of the meeting reflects that the IEP team decided that the student will be provided with instruction in personal fitness one time per month for thirty minutes (Docs. jj and ll).
103. The written summary of the November 11, 2015 IEP team meeting states that the team decided that the student would be provided with ten hours of compensatory services for the loss of special education to address the physical education goal since the summer of 2015, to be provided "after school" (Doc. kk).
104. The Flex Tracker Report and correspondence among the school staff document that the physical education goal was addressed with the student on December 3, 2015, January 7, 2016, and February 8, 2016 during the student's "flex period" (Docs. tt and ll).
105. The student is currently enrolled in a physical education class in which the goal can be addressed (Doc. ooo).

DISCUSSION/CONCLUSIONS:

As stated above, the public agency must ensure that students are provided with the special education services required by the IEP (34 CFR §§300.101, and .323). Based on the Finding of Fact #101, the MSDE finds that the IEP team decided that reports of the student's progress on the annual IEP goals would be made on a quarterly basis. Therefore, this office finds that the goals needed to be addressed each quarter, and not only during those quarters in which the student was enrolled in a physical education class or physical extracurricular activity.

Based on the Findings of Facts #99 - #105, the MSDE finds that the student was not provided with the amount of physical education instruction required prior to December 2015, but that the IEP team determined the services needed to compensate the student for the loss of services.

Based on those Findings of Fact, the MSDE further finds that there is documentation that the student is being provided with the amount of physical education instruction agreed to by the IEP team on November 11, 2015 IEP. Therefore, while the MSDE finds that a violation occurred, no additional corrective action is required to remediate the violation.

ALLEGATION #13C

ADAPTED READING TEXT

FINDINGS OF FACTS:

106. The IEP states that the student “needs to have text read aloud that is above her instructional level for comprehension and to keep focused on the task.” It also states that “whenever possible” the student should be provided with adapted books that are “modified down to the point that vocabulary and content are still appropriate to earn course credit” [Emphasis added]. The IEP requires the use of reading software for textbooks, permitting both auditory feedback and the ability to highlight text and facilitate visual tracking while reading (Docs. k, u, y, and jj).
107. The audio recording of the November 11, 2015 IEP team meeting indicates that the student’s mother expressed concern that the student had not been provided with an adapted text book in English. The school-based members of the team, who did not include the student’s English teacher, discussed that the text book selected for use in the first two marking periods does not have an adapted version. The team discussed whether the student would be comfortable using an alternative text to what the rest of the class is using, which is adapted. The student’s mother stated that “what is more important to me is that she not be frustrated,” and that “she needs a book that is closer to her reading level.” A school-based member of the team agreed (Doc. ll).
108. On November 23, 2015, the school staff member who served as the public agency representative on the November 11, 2015 IEP team meeting confirmed in an email message to the student’s mother that he acknowledged that “the IEP was not being followed by there not being an alternative text for supports since [the English textbook that was chosen for use in the student’s class] was not available in a modified version.” However, the English teacher reports that it was her understanding that an adapted text was to be provided if the text she chose for the course had an adapted version, and she did not agree that the IEP requires the use of a different text book with the student if the one chosen for the class does not have an adapted version (Doc. qq).
109. A review of the materials used by the student’s English teachers reflect that an audio recording of the student’s English textbook is played for the student. In addition, a book that covers the concept addressed in the student’s English textbook, which is written at the student’s instructional level, is also used in English class. The text book selected for use starting the third marking period (February 1, 2016) has an adapted version, which was downloaded onto the students’ assistive technology device on February 5, 2015 (Docs. ll, zz, ooo, and review of materials used in the student’s English class).

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110. On December 21, 2015, the school staff sent the student's mother correspondence stating that because the student is pursuing a Maryland High School Diploma, "she does not qualify for modified text." The correspondence further states:

She does qualify for adapted versions of the text which can be enlarged, digital or read aloud, shortened excerpts. She still must meet the standards of the curriculum (Doc. zz).

DISCUSSION/CONCLUSIONS:

As stated above, in a situation in which a student who is pursuing a Maryland High School Diploma is performing significantly below the level of the grade in which the student is enrolled, the CCPS is required to ensure that the student is provided with specially designed instruction that adapts the content, methodology, or delivery of the instruction to the needs of the student. This includes the use of adapted instructional materials such as textbooks, which may be needed in order to ensure the student's access to the general curriculum so that the student can meet the grade level content standards.

As also stated above, the public agency must ensure that the IEP is written in a manner that is clear to all those involved in the development and implementation of the IEP in order to make sure that the services are provided as intended by the IEP team (34 CFR §§300.101 and .323).

In this case, the complainants assert that the IEP requirement to provide adapted text "whenever possible" creates an obligation on the school system to either choose an English textbook that has an adapted version, or to provide the student with a different text that has an adapted version if there are other English texts that are adapted (Doc. bbb).

Based on the Findings of Facts #106 - #110, the MSDE finds that, while other supports have been provided to assist the student with reading comprehension, the student was not provided with an adapted English textbook during the first two marking periods.

Based on those Findings of Facts, the MSDE finds that the documentation reflects that there is disagreement among the school staff and between the school staff and the complainants about what constitutes an adapted textbook and the circumstances under which an adapted textbook must be provided. As a result, this office finds that the IEP is not written clearly and thus, the CCPS could not ensure that it was implemented as intended by the IEP team. Therefore, the MSDE finds that a violation occurred.

ALLEGATIONS #13F AND #13I

**PEER TUTORING AND FADE PLAN FOR
ADULT SUPPORT**

FINDINGS OF FACTS:

111. The IEP requires that the student be provided with adult support on a daily basis "during academic time and transitions, as necessary." The IEP states that "the IEP team will monitor and take data on the amount of support that [the student] needs to support the development of a fade plan to reduce reliance on adult support whenever possible" (Docs. k, u, y, and jj).
112. The IEP in effect during the 2015-2016 school year also requires that the student be provided with "peer tutoring/paired work arrangement" on a periodic basis and explains that the student is to be provided with opportunities to work collaboratively with peers on classroom assignments and other activities "as seen fit by the teacher" in order to reduce the student's need for adult support and improve her social skills (Doc. y).
113. The audio recording of the January 23, 2015 IEP team meeting reflects that the IEP team agreed that the complainants and the school system staff would meet in February 2015 to begin to review the fade plan.¹⁵ However, there is no documentation that this occurred (Doc. ww and review of the audio recording of the January 23, 2015 IEP team meeting).
114. At the November 11, 2015 IEP team meeting, the student's mother expressed concern that the team had not focused on the fade plan to reduce adult support over the past year as they had in previous years. The student's mother indicated that she believes that the frustration that the student exhibits when working with the school staff is the result of her desire to work more with peers and less with adults. However, the IEP team did not have sufficient time to review the fade plan at the November 11, 2015 meeting (Review of audio recording of the November 11, 2015 IEP team meeting).
115. On November 17, 2015, the student's mother sent correspondence to the student's English teacher stating that the student is "clearly resisting adult support" and suggesting the use of peers as models or tutors instead of adults so that she can work more independently. In response, the English teacher indicated that she would contact a teacher who teaches English 11 honors to see if she has a student who could work with the student during the student's "flex period" (Doc. mm).

¹⁵ There is documentation that the fade plan was previously updated by the parties outside of an IEP team meeting on March 10, 2014 (Doc. i).

116. The Flex Tracker documents that the student worked with a peer tutor during the “flex period” on December 18, 2015 at the request of the English teacher (Doc. llll).
117. On February 29, 2016, the school staff provided the complainants with a sample of the student’s writing, which had been edited by her peers (Doc. zzz).
118. The correspondence between the student’s mother and the school system staff, dated December 13, 2015 to December 21, 2015, documents that the school staff and the complainants are working on reviewing the fade plan. However, there is no documentation that the IEP team has reviewed the fade plan based on data regarding the amount of support the student needs or that the parties have reached agreement on the plan outside of an IEP team meeting (Doc. ww).

DISCUSSION/CONCLUSIONS:

As stated above, the public agency must ensure that students are provided with the special education services required by the IEP (34 CFR §§300.101, and .323).

As also stated above, 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 (34 CFR §§300.101, .304, .320, and .324).

In this case, the complainants allege that the student is resistant to accept adult support in the classroom, and that while the IEP team decided that peer tutoring would be used to assist with fading out the use of adult support, this has not occurred. The complainants also allege that, while data has been collected on the use of adult support during the 2015-2016 school year, the data does not measure the student’s progress on the current plan and that the IEP team has not monitored data in order to fade out her reliance on the adult support when possible (Docs. bbb and uuu).

Allegation #13F

Peer Tutoring/Paired Work

Based on the Findings of Facts #111, #116, and #117, the MSDE finds that peer tutoring/paired work arrangements have occurred and thus does not find a violation with respect to this aspect of the allegation.

Allegation #13I

Review of Fade Plan

Based on the Findings of Facts #111, #113, #114, and #118, the MSDE finds that the fade plan has not been reviewed and updated by the IEP team or by agreement of the parties outside of an IEP team in over a year and the team has not considered the mother’s concerns about the manner

in which the peer tutoring is being provided in order to ensure that adult support can be faded. Therefore, the MSDE finds that violations have occurred with respect to this aspect of the allegation.

**ALLEGATIONS #13G AND #13H TRANSITION SERVICES, INCLUDING
INDEPENDENT LIVING SKILLS TRAINING**

FINDINGS OF FACTS:

119. The IEP states the following with respect to transition services/activities: “[The student] will continue to develop her career portfolio that will be used during her career mock interview her junior year.” It also states that the student will “participate in Seamless Transition,”¹⁶ and the following:

During high school, [the student] will attend either the Video Production Program at the [Carroll County Career Tech Center] (CCCTC) or the 5th Mod Video Production Program at the CCCTC (Docs. k, u, y, and jj).

120. The audio recording of the January 23, 2015 IEP team meeting reflects that the team discussed that the student had not yet been accepted into the Video Production Program at the CCCTC, and that if she was not accepted, the 5th Mod Video Production Program would be explored for her senior year of high school. The audio recording also reflects that the team decided that the student would participate in Seamless Transition between the 11th and 12th grades (Docs. k, u, y, jj, and review of the audio recording of the January 23, 2015 IEP team meeting).
121. On May 30, 2015, the student’s mother sent correspondence to the school staff inquiring about when information from the portfolio that she and the student were working on would be used for interview activities. The school staff responded that this would occur the following school year during Advisory Period,¹⁷ and that the student’s mother would

¹⁶ This is a program offered to students through a collaboration among the CCPS, Carroll Community College, and other community partners, that involves delivery of specific transition service components beginning in high school and including resources of transition partners that is designed to result in uninterrupted collaborative transition from public secondary education to employment and postsecondary education. Key components include the discovery process, transition planning and services, an array of work experiences including a paid employment experience, and system linkages (Docs eeee, hhhh, and www.carrollk12.org).

¹⁷ This is the period on the school schedule from 9 a.m. to 9:40 a.m. that is used as a homeroom, which can be used as a “Flex Period” (www.carrollk12.org).

be notified when they were closer to the time when interviews would be conducted using the portfolio (Doc. r).

122. On October 23, 2015, the school staff contacted the student's mother and indicated that there were a few lessons coming up for the portfolio and that she would be alerted as soon as they were scheduled. There is no information or documentation that the student's mother was contacted subsequently about the matter (Doc. cc).
123. On March 9, 2016, the Transition Instructor responded to correspondence from the student's mother indicating that she understood that the student had attended a Seamless Transition program meeting on February 23, 2016 and inquiring as to whether there had been any other meetings this school year. The Transition Instructor responded that the student was not initially on her list of students with whom to work since she had worked with her the previous school year. She reported that, on December 15, 2015, the student was added to her list of students to work with as a result of a request from school staff. The Transition Instructor explained that "the goal of Seamless Transition is to see the students at least monthly as their schedule allows," but that due to winter break, inclement weather, and State assessments, she was not able to meet again with students from XXXXXXXXXXXXXXX until February 23, 2016 (Docs. aaaa and eeee).
124. The 2015-2016 schedule for Advisory Period activities reflects that activities are scheduled on resume development and mock interview prep as follows:
 - March 21, 2016 – Resume development;
 - March 28, 2016 – Mock interview prep; and
 - April 4 and 11, 2016 – Mock interview prep (Doc. qqqq).
125. The IEP also states the following with respect to the transition services/activities to be provided: "[The student] will participate with the [life skills class] during their Friday cooking activities which will occur every other Friday (based on [the student's] schedule) or twice a month." The audio recording of the November 11, 2015 IEP team meeting reflects that the IEP team considered the complainants' concerns that the student had not been given the opportunity to participate in these cooking activities. The team discussed that the difficulty was that the school staff did not want the student to miss academic instruction in order to participate in cooking. The team discussed that, based on the student's current schedule, she would miss her chemistry class if she participated in cooking activities. The team discussed that the student would be enrolled in a physical education class during the Friday cooking activities starting the third marking period (February 1, 2016), and agreed that she could be pulled from that class every Friday effective at the start of the third marking period in order to ensure that she could participate in cooking activities and to make up for the time missed (Doc. ll).

126. The daily communication log reflects that on Friday, December 18, 2015, the student participated in a cooking activity with the life skills class. It also reflects that she was directed to go the life skills class to participate in cooking on Friday, February 5, 2016, but refused to go (Doc. kkkk).
127. On February 7, 2016, the student's mother sent the school staff correspondence explaining that the student was not expecting to go to the life skills class on February 5, 2016 because they had not been informed in advance in order to prepare her to participate in the class. The student's mother also requested that the IEP be revised to reflect the current schedule in order to ensure that student is able to participate in cooking activities as determined by the IEP team (Doc. ooo).
128. The communication log reflects that the student has participated in cooking activities every Friday since the start of the third marking period on February 1, 2016 (Doc. kkkk and www.carrollk12.org).

DISCUSSION/CONCLUSIONS:

As stated above, the public agency must ensure that students are provided with the special education services required by the IEP (34 CFR §§300.101 and .323).

In this case, the complainants allege that the student has not been provided with transition services, such as cooking activities and participation in the Seamless Transition Program, including participation in activities such as mock interviews and video production, as required by the IEP (Doc.).

Allegation #13G

Seamless Transition/Mock Interviews/Video Production

Based on the Findings of Facts #119-#124, the MSDE finds that there is documentation that the student has participated in Seamless Transition, and is scheduled to be involved in mock interview activities. Based on the Finding of Fact #120, the MSDE finds that the IEP team did not anticipate that the student, who is in her junior year of high school, would participate in video production until her senior year of high school. Therefore, this office does not find that a violation occurred with respect to the allegation.

Allegation #13H

Independent Living Skills/Cooking Activities

Based on the Findings of Facts #125-#127, the MSDE finds that prior to the third marking period, the student was not provided with the opportunity to participate in cooking activities, as required by the IEP. Therefore, this office finds that a violation occurred.

Notwithstanding the violation, based on the Findings of Facts #125 and #128, the MSDE finds that the IEP team determined the compensatory services that would be provided to remediate the violation, and there is documentation that the student is being provided with those services. Therefore, no further corrective action is required.

ALLEGATION #13J

ADVANCE NOTICE OF TESTS IN ENGLISH CLASS

FINDINGS OF FACTS:

129. The IEP requires that the student be given “advance notice in writing of any tests, projects, homework, etc...preferably before, but no later than when other students are informed of the due dates.” The IEP states that the notice will be provided in a communication notebook that goes back and forth from school to home (Doc. u).
130. On January 17, 2016, the student’s mother sent correspondence to the student’s English teacher thanking her for posting notes from the Home Access Center¹⁸ into the communication log, and requesting that all of the notes be provided in the communication log, as required by the IEP, instead of through the Home Access Center, in the future. In that correspondence, the student’s mother noted that she has not received any advance notice of tests in English except for a sentence combining quiz, and she requested that the teacher begin providing notice on a consistent basis (Doc. hhh).
131. The communication log reflects notations about work with the student in English, but does not include notice from the English teacher about upcoming assignments and quizzes in English (Doc. kkkk).
132. The English teacher's assignment log reflects that there were two quizzes in English in addition to the one on sentence combining, and that the messages provided by the English teacher on the Home Access Center do not include information about these quizzes. The English teacher reports that the student was not provided with advance notice of these tests because none of the other students were provided with advance notice of the tests and that she intended for them to be “pop quizzes” (Docs nnnn, pppp, and interview with the school staff).

¹⁸ This is the CCPS parent portal that allows parents to login and view information pertain to their children. It is used to assist in the communication of importation educational information with teachers, staff, and administration staff (www.carroll12.org).

DISCUSSION/CONCLUSIONS:

As stated above, the public agency must ensure that students are provided with the special education services required by the IEP (34 CFR §§300.101, and .323).

The complainants allege that the student has not been consistently provided with advance notice of tests in English (Doc.). Based on the Findings of Facts #129 - #132, the MSDE finds that the IEP is not written clearly with respect to whether the student is to be provided with notice of tests in a manner that is different from other students.¹⁹ Therefore, the MSDE finds that the CCPS could not ensure that the IEP was implemented as intended by the IEP team, and that a violation occurred.

ALLEGATION #13K

PROVISION OF VISUALS TO ASSIST WITH VOCABULARY

FINDINGS OF FACTS:

133. The IEP requires that the student be provided with strategies to support vocabulary, such as PowerPoints and other visuals, in order to clarify concepts and assist her in remembering the meaning of words (Docs. k, u, y, and jj).
134. On January 17, 2016, the student's mother indicated to the student's English teacher that she has searched through the student's iPad and cannot find examples of vocabulary paired with pictures other than a PowerPoint on literary devices, and requested that she begin providing these (Doc. ddd).
135. A review of the work done by the special education English teacher with the student reflects that the teacher has drawn pictures by hand in order to prepare the student for vocabulary that will be addressed in English. There is also an example of a photograph being used to assist the student with a reading and writing assignment (Review of the work done with the student for English class).
136. On February 8, 2016, the student's mother expressed concern to the principal that a power point on the student's iPad that was provided to assist the student with vocabulary does not include the vocabulary words for her to use with the visual. In that

¹⁹ If the student is not to receive notice that is different from that provided to other students, it is difficult to understand why this service is included on the IEP. In addition, if the student is to receive advance notice of all tests except for "pop quizzes," it is difficult to understand why the IEP does not indicate this.

correspondence, the student's mother also requested that the speech/language services provided in the general education classroom be provided in the English class since the English teacher reports that the student continues to struggle with tone and diction and because her Speech/Language Impairment impacts her ability to master these language concepts (Doc. ppp).

137. There is an example of a PowerPoint developed using a graphic organizer that was created using Inspiration software and a graphic organizer containing visuals paired with tone words to assist the student with a written assignment that was due in February 2016 (Review of the student's work and supports provided for a written assignment).

DISCUSSION/CONCLUSIONS:

As stated above, the public agency must ensure that students are provided with the special education services required by the IEP (34 CFR §§300.101 and .323).

Based on the Findings of Facts #133 - #137, the MSDE finds that there is evidence that this support is being provided and does not find that a violation occurred. The complainants are encouraged to address their concerns about the manner in which the services are being provided with the IEP team.

ALLEGATIONS #13L AND #16

MULTI-STEP WORK BROKEN DOWN INTO SINGLE-STEP COMPONENTS AND SCAFFOLDED IN MATH AND MATH ENRICHMENT

FINDINGS OF FACTS:

138. The IEP states that "independent work needs to be scaffold to show desired outcome: e.g., clear 'example' on top of page with fading support leading to independent completion of final tasks." It also states that the teachers will "allow use of resource sheets (e.g., formulas, procedures, rules, vocabulary with definition) on classwork and tests when application of items is required," and provide the student with prompting and cueing to complete independent tasks (Docs. k, u, y, and jj).
139. On October 8, 2015, the student's mother contacted the student's math teacher to express concern that the student was becoming frustrated with math work and indicated her belief that the school staff were not breaking down multi-step problems into single-step

components with scaffolding to show the desired outcome on the top of each page. The math teacher responded, stating:

We have had examples for [the student], however it has not been as clear as you have suggested on which examples go with each specific lesson or topic. We will be more clear in showing the examples and which ones they correlated to for our lessons and concepts (Doc. hh).

140. The audio recording of the November 11, 2015 IEP team meeting reflects that the team discussed that the student was struggling in algebra and that the student's mother indicated her belief that this was because the use of the "blue reference sheets"²⁰ were not working, and requested that the information being provided on those sheets be placed on the top of the page of directions in order to reduce the student's frustration. The special education math teacher reminded the student's mother that there was not enough room on the top of the pages of directions, which is why the information is being provided on separate reference sheets. The teacher also reported that no matter how much she is breaking down the work in algebra, the student is struggling to do the work because of the complexity of the concepts that must be mastered (Doc. ll).
141. On January 21, 2016, the student's math teacher responded to an inquiry from the student's mother about whether the student was getting her homework completed correctly since she was receiving 100% on her homework but was not performing well on tests. In response, the math teacher responded that "to answer your question about if she is getting them right, unfortunately I have noticed that most of the problems are incorrect, although she does show effort working through the problems each time." The teacher explained that the student is continually provided with answer keys and feedback in order to go through the problems to determine where in the process she went wrong. The teacher further explained that the student spends time processing the information from the class and works on applying the processes in class, which is why she is given full credit for working on learning the concepts. However, the teacher reported that the student is graded on the correctness of her answers on assessments that are administered after they have worked through the concepts with the student (Doc. iii).
142. The IEP also requires that the student be provided with assistance in math during a support mod.¹ The audio recording of the January 23, 2015 IEP team meeting reflects that the IEP team anticipated that the student's biggest challenge in high school would be the algebra class she was scheduled to take during the upcoming semester. The IEP team

²⁰ These are separate sheets of blue paper used to provide the student with a breakdown of work into single steps showing desired outcomes (Review of the student's classwork and the audio recording of the November 11, 2015 IEP team meeting).

decided to add a support mod to the student's schedule for the next semester in which she would be provided with the services of a special education teacher "to enrich her math comprehension." The public agency representative recommended decreasing the amount of special education instruction from a special education teacher in the general education classroom by one-half since the student would be receiving the support mod. The student's mother expressed concern about decreasing the support in the classroom, especially with the student beginning an algebra class. The public agency representative on the team indicated that the team would revisit the issue if the student began to struggle in algebra (Doc. l and review of the audio recording of the January 23, 2015 IEP team meeting).

143. The January 23, 2015 IEP states that the student is removed from the general education setting to receive a mod of support to enrich her math comprehension. While the IEP that was revised on September 3, 2015 continues to include this statement, it also states that the student will be enrolled in a support mod each day to enrich her math comprehension, reading, and written language skills and to work on other content specific school work. It also states that if the student is unable to complete class work during class time that she be able to complete work on the following day during her support mod instead of being required to do the work at home. A review of the audio recording of the September 3, 2015 IEP team meeting indicates that the team discussed that a support mod was being added to the student's schedule each day since the work was getting more complex and the student is requiring more support (Docs. k, u, y, and jj).
144. The audio recording of the November 11, 2015 IEP team meeting indicates that the team discussed that the student receives support for algebra and chemistry in a support mod every other day and that a special education teacher works with her every Friday on algebra during the "flex period." The special education math teacher reported that while the student was "doing well in all of her goals so far," they were getting to the point in algebra where the work was increasing in complexity and that the student was beginning to struggle and to experience frustration. However, there is no indication that the team reconsidered whether the student was receiving sufficient support in the math class as agreed to at the January 23, 2015 IEP team meeting (Review of audio recording of the November 11, 2015 IEP team meeting).
145. The Flex Tracker Report reflects that the special education math teacher worked with the student during "flex period" once every other week in October 2015, three times in November 2015, once in December 2015, and three times in January 2016 (Doc. llll).
146. The communication log reflects that the student was provided with algebra support during a support mod one time in four out of five weeks in September 2015, once per week except for the last week in October 2015, once per week in November 2015, three

times in the first week of January 2016, and twice in the first week of February 2016 (Doc. kkkk).

DISCUSSION/CONCLUSIONS:

As stated above, the public agency must ensure that students are provided with the special education services required by the IEP (34 CFR §§300.101 and .323).

As also stated above, the public agency must ensure that the IEP is written in a manner that is clear to all those involved in the development and implementation of the IEP in order to make sure that the services are provided as intended by the IEP team (34 CFR §§300.101 and .323).

The complainants allege that, in math, multi-step work was not broken down into single step components for the student until October 2015, and that the student has never been provided with scaffold steps to assist her in completing work independently. They also allege that the student was not provided with time for math enrichment activities during a support mod, which resulted in the student being unsuccessful in algebra (Docs. bbb and qqq).

Allegation #13L Breaking Down and Scaffolding Multi-Step Work

Based on the Findings of Facts #138 - #141, the MSDE finds that, while the student's mother has expressed concern about the manner in which the supports have been provided, there is documentation that the student was provided with multi-step work broken down into single-step components as required by the IEP, and that the team addressed those concerns. Therefore, this office does not find a violation with respect to Allegation #13L.

Allegation #16 Math Enrichment

Based on the Findings of Facts #142 - #146, the MSDE finds that there is documentation that the student is provided with assistance through a support mod, but the IEP is not written clearly with respect to the amount of support that was to be provided to the student in math, and thus, the CCPS could not ensure that the services were provided as intended by the IEP team.

Based on those Findings of Facts, the MSDE also finds that there is no documentation that the IEP team reconsidered the amount of support the student needed when the student began to struggle in math, as decided at the January 23, 2015 IEP team meeting. Therefore, this office finds that violations have occurred with respect to Allegation #16.

ALLEGATION #13M SECOND CHANCE LEARNING

FINDINGS OF FACTS:

147. The IEP in effect since January 23, 2015 requires the provision of "second chance learning"²¹ for all summative assignments when the student scores lower than a C grade. It states that "second chance grading is at the teacher's discretion, based on department second chance learning policy" (Docs. k, u, y, and jj).
148. The CCPS Guidelines for Second Chance Learning indicate that teachers are to specifically define their approach to second chance learning in their course syllabus. The Guidelines state that second chance learning "is inherent to the formative assessment process," and indicate that it may also be used with summative assessments.²² The Guidelines further indicate that a reasonable time frame for completion and how the work will be completed will be agreed upon between the teacher and the student, and that, under the direction of the teacher, the student develops a second chance learning plan and provides evidence that the plan is completed before they are given a re-assessment opportunity (www.carrollk12.org).
149. On November 5, 2015, the student's English teacher sent the student's mother correspondence indicating that she had been attempting to provide the student with second chance learning during the student's "flex period," but had been unsuccessful because that time period was being used for other activities (Doc. gg).
150. The English teacher's notes that were provided through the Home Access Center reflect that the student was provided with second chance learning on sentence combination on December 15, 2015 (Docs. pppp).
151. On January 25, 2016, the school staff sent the student's mother correspondence in response to concern that she had expressed that the student was not consistently being provided with second chance learning for summative assignments. In that correspondence, the school staff indicated that the student's English teacher reports that "summative assignments do not qualify for second chance learning" (Doc. kkk).

²¹ This is an instructional strategy for increasing student mastery of course content, which includes re-teaching, extra practice, and the opportunity to demonstrate new learning on another assessment (www.carrollk12.org).

²² The Guidelines define formative assessments as those designed to provide practice and to guide next step instruction, and summative assessments as those designed to evaluate student learning, which are provided after instruction has ended (www.carrollk12.org).

152. The Course Overview developed by the student's English teacher indicates that, in order to participate in second chance learning opportunities, a second chance learning plan must be completed by students that is developed with the teacher. The Course Overview does not indicate that summative assessments are excluded from second chance learning (Doc. oooo and interview with the school staff).
153. The correspondence between the student's mother and the school staff reflect that prior to the 2015-2016 school year, the student was permitted to retake quizzes in English class as part of second chance learning, and no plan was developed with the student for the provision of second chance learning in English for the current school year (Doc. g).

DISCUSSION/CONCLUSIONS:

As stated above, the public agency must ensure that students are provided with the special education services required by the IEP (34 CFR §§300.101 and .323).

In this case, the complainants allege that the student has not consistently been provided with the opportunity to re-take tests for summative assessments in English for which she earned less than a 60% grade (Doc. bbb).

Based on the Findings of Facts #147, #149, and #150, the MSDE finds that, while the student was provided with opportunities for second chance learning in English, she was not permitted to participate in second chance learning in English for summative assignments.

Based on the Findings of Facts #148, #152, and #153, the MSDE finds there is nothing in the English teacher's Course Overview or the CCPS Guidelines for Second Chance Learning or any second chance learning plan developed between the teacher and the student that indicates that summative assessments cannot be included in second chance learning for English. Therefore, this office finds that a violation occurred.

ALLEGATION #13N

VISUAL MODIFICATIONS

FINDINGS OF FACTS:

154. The IEP, dated January 23, 2015, requires the provision of large print materials to enable the student to focus on the informational text and prevent her from losing focus. The IEP states that as a result of recommendations made by a vision specialist, colored markers should be used to highlight different lines on graphs, tactile indicators should be used to make a raised line, point or area, and line markers, such as rulers and guides, should be used to block out extraneous materials (Doc. k).

155. The IEP in effect during the 2015-2016 school year was revised to require visual modifications, including the reduction of visual clutter on worksheets and handouts, presentation of objects against high contrast backgrounds, print font size of 18 to 20 point font using Arial or Helvetica font on plain white paper in high contrast. It also requires that worksheets be written in large print with adequate "white space," with six to eight problems per page (Docs. u and jj).
156. On January 7, 2016, the student's mother sent correspondence to the student's math teacher indicating that the student could not use the tiny graphs on the worksheet that was sent home. In response, the math teacher indicated that they were not intended for the student's use, but were the ones used by the rest of the class, and that the enlarged graphs for the student's use were on the other side of the papers. The math teacher indicated that she and the vision teacher would consult on how to present the material so that there is no confusion for the student about which graphs she is to use (Doc. ccc).
157. A review of the student's class work indicates that the student has been provided with graphs in math, on which different lines on the graphs are highlighted and the charts are enlarged (Review of the student's class work).
158. On January 23, 2016, the student's mother sent the school staff correspondence attaching a sample document that had been downloaded onto the student's iPad, which reflected several pages of single space writing in regular (not enlarged) font. In the correspondence, the student's mother reported that the student was unable to enlarge the font without having sentences run off of the computer screen and indicated that the student would have difficulty reading the material without reducing visual clutter (Doc. jjj).

DISCUSSION/CONCLUSIONS:

As stated above, the public agency must ensure that students are provided with the special education services required by the IEP (34 CFR §§300.101 and .323).

In this case, the complainants allege that the student has not consistently been provided with visual modifications, such as reducing visual clutter and white space, provision of spacing between lines of text, and enlarged graphs (Doc. bbb).

Based on the Findings of Facts #154 - #158, the MSDE finds that there is documentation that the supports are being provided. Based on those Findings of Facts, the MSDE finds that, while the student's mother has expressed concerns about how the supports are being provided, the school staff continue to consider how to make improvements on how they are being provided in order to respond to those concerns. Therefore, this office does not find that a violation occurred.

**ALLEGATIONS #14 AND #17 INITIATION OF VISION SERVICES AND THE
CONSISTENT PROVISION OF THOSE SERVICES
IN THE PLACEMENT REQUIRED BY THE IEP
SINCE OCTOBER 15, 2015**

FINDINGS OF FACTS:

159. On September 3, 2015, the IEP team developed goals for the student to improve visual discrimination and tracking and decided that thirty minutes per week of special education instruction would be provided in the general education classroom by a teacher of the visually impaired to assist her in achieving the goals (Doc. y).
160. Due to the loss of a vision teacher, there was a delay in the provision of special education instruction to assist the student with the goals until the first week of October 2015 (Doc. ll).
161. The vision teacher's service log reflects that, since the initiation of services, the student has been provided with weekly vision services, with the exception of weeks when school was closed due to inclement weather or a holiday on the day that service was scheduled to be provided. In addition, the vision services teacher reported to the student's mother that services were missed the week of February 26, 2016 because of the need to participate in IEP team meetings that were scheduled during the time period that services were scheduled. However, not all of the services are being provided in the general education classroom, but are also provided during the student's support mod (Docs. sss, jjjj, and interview with the school staff).

DISCUSSION/CONCLUSIONS:

As stated above, the public agency must ensure that students are provided with the special education services required by the IEP (34 CFR §§300.101 and .323).

As also stated above, the public agency is generally responsible for making alternative arrangements to provide the services required by the IEP when other school-related activities make either the student or the service provider unavailable during the time that the service is regularly scheduled. The public agency is not obligated to do so when the student is unavailable for other reasons such as school closure or the student's absence from school (*Letter to Balkman*, United States Department of Education, Office of Special Education Programs, 23 IDELR 646, April 10, 1995).

In this case, the complainants allege that there was a delay in the implementation of vision services from September 3, 2015, when the services were determined necessary by the IEP team,

until October 15, 2015, when the services were initiated. They also allege that vision services have not been provided in the general education classroom on a weekly basis, as required by the IEP (Doc. bbb).

Based on the Findings of Facts #160 - #161, the MSDE finds that there was a delay in the initiation of vision services, and that the services that have been provided since October 15, 2015 have not been provided in the placement required by the IEP. Therefore, this office finds that violations occurred with respect to the allegations.

CORRECTIVE ACTIONS/TIMELINES:

Student-Specific

The MSDE requires the CCPS to provide documentation of the following by May 1, 2016:

- a. That the student is being provided with the opportunity to re-take tests for summative assessments in English, the amount of speech services required by the IEP, and the amount of vision services in the placement required by the IEP;
- b. That the IEP has been revised to reflect the IEP team's November 11, 2015 decision about the frequency with which the student will participate in cooking activities; and
- c. That the speech/language service logs have been revised to accurately reflect the services provided to the student.

The MSDE also requires the CCPS to provide documentation by the end of the 2015-2016 school year that the IEP team has done the following:

- a. Determine whether travel training services must be addressed through the IEP, consistent with the data, and if so, determine the services needed to compensate the student for the delay in addressing those services;
- b. Consider the complainants' concerns about the manner in which supports are provided for written language, revise the IEP, as needed, to provide any clarification of the manner in which supports are to be provided based on those concerns, and determine whether the violation related to the delay in addressing those concerns had a negative impact on the student's ability to benefit from the education program and if so, the services needed to remediate the violation;
- c. Review and revise, as appropriate, the plan to fade adult support and determine whether the delay in doing so had a negative impact on the student's ability to benefit from the education program, and if so the services needed to remediate the violation;

- d. Review and revise the IEP, as appropriate, to clarify the circumstances under which adapted textbooks that are modified to a lower grade level will be provided to the student, determine whether the violation related to the lack of an adapted English textbook for the first two marking periods of the 2015-2016 school year had a negative impact on the student's ability to benefit from the educational program, and if so, the services needed to remediate the violation;
- e. Review and revise the IEP, as appropriate, to clarify the type of support that the student is to receive each week through support mods;
- f. Review and revise the IEP, as appropriate, to clarify whether the speech/language services are to be recorded on the communication log and the student's agenda;
- g. Determine whether the violation related to the IEP not being written clearly with respect to the amount of support the student was to receive in a support mod for math negatively impacted the student's ability to benefit from the educational program, and if so, the services needed to remediate the violation;
- h. Determine whether the violations related to the lack of an adapted English textbook, advance notice of tests in English class, and second chance learning on summative assessments in English class had a negative impact on the student's ability to benefit from the educational program, and if so the services needed to remediate the violations;
- i. Determine the amount of speech/language services missed during the 2015-2016 school year and determine the services needed to compensate the student for the loss; and
- j. Determine the services needed to compensate the student for the delay in addressing her vision service needs and the loss of vision services in the placement required by the IEP.

School-Based

The MSDE requires the CCPS to provide documentation by the start of the 2016-2017 school year that the XXXXXXXXXXXXXXXXXXXX staff have received training to ensure that they comply with the requirements for the following:

- a. Ensuring that assessment results are considered by the IEP team in reviewing, and as appropriate, revising the IEP within 90 days of the IEP team meeting in which the team determines that the data is needed;

- b. Ensuring that proper written notice is provided to parents prior to proposing or refusing to initiate a change to the identification, evaluation, or educational placement or the provision of a FAPE to a student with a disability;
- c. Ensuring that parents are informed of the right to a hearing to challenge information in the educational record within a reasonable period of time when refusing to make amendments to the record in response to parent requests;
- d. Ensuring that parent concerns are addressed by the IEP team;
- e. Ensuring that students are provided with the amount of vision services required by the IEP;
- f. Ensuring that students are provided with related services in the amount and frequency required by the IEP and that those services are accurately documented;
- g. Ensuring that students are provided with the supplementary aids and services and transition services in accordance with the IEP; and
- h. Ensuring that each student's IEP is written clearly with respect to the supplementary aids, services, and supports that are to be provided to the student.

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

TECHNICAL ASSISTANCE:

Technical assistance is available to the complainants and the CCPS by Dr. Nancy Birenbaum, Compliance Specialist, MSDE. Dr. Birenbaum may be contacted at (410) 767-0255.

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

If additional information is provided, it will be reviewed and the MSDE will determine if a reconsideration of the conclusions is necessary. Upon consideration of this additional documentation, this office may leave its findings and conclusions intact, set forth additional findings and conclusions, or enter new findings and conclusions. Pending the decision on a

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XXX

Mr. Russell Gray

March 17, 2016

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request for reconsideration, the school system must implement any corrective actions consistent with the timeline requirements as reported in this Letter of Findings.

Questions regarding the findings of facts, conclusions and corrective actions contained in this letter should be addressed to this office in writing. The complainants and the school system 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/am

cc: Stephen H. Guthrie
Wayne Whalen
XXXXXXXXXX
Dori Wilson
Anita Mandis
Nancy Birenbaum