



Bernard J. Sadusky, Ed.D.  
Interim State Superintendent of Schools

200 West Baltimore Street • Baltimore, MD 21201 • 410-767-0100 • 410-333-6442 TTY/TDD • MarylandPublicSchools.org

August 2, 2011

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Ms. Patty Daley  
Director of Special Education  
Howard County Public Schools  
10910 Route 108  
Ellicott City, Maryland 21042-6198

RE: XXXXX  
Reference: #11-099

Dear Parties:

The Maryland State Department of Education, Division of Special Education/Early Intervention Services (MSDE), has completed the investigation of the complaint regarding special education services for the above-referenced student. This correspondence is the report of the final results of the investigation.

**ALLEGATIONS:**

On June 6, 2011, MSDE received a complaint from Ms. XXXXXXXXX, hereafter, “the complainant,” on behalf of her daughter. In that correspondence, the complainant alleged that the Howard County Public Schools (HCPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to the above-referenced student. MSDE investigated the following allegations:

1. HCPS has not ensured that the student’s need for assistive technology devices and services, spelling, written language, and travel training have been identified and addressed since June 2010,<sup>1</sup> in accordance with 34 CFR §§300.101, .320, and .324.
2. HCPS did not ensure that proper procedures were followed when determining the student’s need for Extended School Year (ESY) services for the summer of 2010, in accordance with 34 CFR §§300.101, .320, and .324, and COMAR 13A.05.01.08(B).

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<sup>1</sup> While the allegations were alleged to have been continuing in nature over the past two (2) years, the complainant was informed, in writing, on June 10, 2011 that a State complaint investigation may not address a time period that occurred more than a year from the date of the filing of the complaint (34 CFR §§300.151 - .153).

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3. HCPS has not ensured that the student has been provided with the transition services and the following accommodations required by the Individualized Education Program (IEP), in accordance with 34 CFR §300.101:
  - a. books on tape;
  - b. a second set of books to take home; and
  - c. notes.
4. HCPS did not ensure that the complainant was provided with a proposed IEP and other documents considered by the IEP team at least five (5) days prior to IEP team meetings since June 2010,<sup>1</sup> in accordance with Md. Code Ann., Educ., §8-405 (2010).
5. HCPS has not ensured the protection of confidentiality of the student's personally identifiable information since June 2010,<sup>1</sup> in accordance with 34 CFR §§300.611 - .625.
6. HCPS has not provided the complainant with access to the student's education record since June 2010,<sup>1</sup> in accordance with 34 CFR §300.613.

#### **INVESTIGATIVE PROCEDURES:**

1. On June 8, 2011, Ms. Anita Mandis, Section Chief, Complaint Investigation Section, MSDE, conducted a telephone interview with the complainant and clarified the allegations to be investigated. On that date, MSDE sent a copy of the complaint, via facsimile, to Ms. Patty Daley, Director of Special Education, HCPS; and Ms. Janet Zimmerman, Coordinator of Special Education Services, HCPS.
2. On June 10, 2011, MSDE sent correspondence to the complainant that acknowledged receipt of the complaint and identified the allegations subject to this investigation. On the same date, MSDE notified Ms. Daley of the allegations and requested that her office review the alleged violations.
3. On June 15 and 16, 2011, Ms. Mandis conducted telephone interviews with the complainant regarding the allegations in the complaint.
4. On July 13, 2011 and Ms. Mandis and Mrs. Martha J. Arthur, Education Program Specialist, MSDE, conducted a site visit at XXXXXXXXXXXX (XXXXXXXXXX) to review the student's education record, and interviewed Ms. XXXXXXXXXXXXXXX, principal. Ms. Ashley Van Cleef, Resource Teacher, Nonpublic Services and Special Education Compliance, HCPS, and Ms. Ellen Hill, Instructional Facilitator, HCPS, attended the site visit as representatives of HCPS and to provide information on HCPS policies and procedures, as needed.

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5. On July 13, 14, 18, and 25, 2011, and August 1, 2011, HCPS provided MSDE with documentation to consider in conducting the complaint investigation.
6. On July 20 and 25, 2011, the complainant provided MSDE with documentation to consider in conducting the complaint investigation.
7. MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings (LOF), which includes:
  - a. Howard County Board of Education Policy #9050, Student Records and Confidentiality, effective January 23, 2007;
  - b. Report of a private neuropsychological evaluation obtained by the complainant, dated March 9, 2010;
  - c. IEP, developed on March 26, 2010, and written invitation to the meeting;
  - d. Electronic mail messages (e-mail) between the complainant and HCPS staff and among HCPS staff, dated between June 2, 2010 and July 5, 2011;
  - e. Written summary of the June 3, 2010 IEP team meeting, and written invitation to the meeting;
  - f. Written summary of the June 17, 2010 IEP team meeting, and written invitation to the meeting;
  - g. Correspondence from HCPS to the complainant, dated June 18, 2010;
  - h. Written summary of the August 11, 2010 IEP team meeting, and written invitation to the meeting;
  - i. Written summary of the August 20, 2010 IEP team meeting, and written invitation to the meeting;
  - j. Written summary of the September 2, 2010 IEP team meeting, and written invitation to the meeting;
  - k. IEP, dated September 22, 2010, written summary of the IEP team meeting, and written invitation to the meeting;
  - l. Written summary of the October 8, 2010 IEP team meeting, and written invitation to the meeting;
  - m. IEP, dated January 13, 2011, written summary of the IEP team meeting, and written invitation to the meeting;
  - n. Correspondence from HCPS to the complainant, dated February 2, 2011, forwarding an amended written summary of the January 13, 2011 IEP team meeting;
  - o. Written summary of the March 25, 2011 IEP team meeting, and written invitation to the meeting;
  - p. Written summary of the May 27, 2011 IEP team meeting, and written invitation to the meeting;
  - q. Written summary of the June 20, 2011 IEP team meeting, and written invitation to the meeting;
  - r. Written invitation to an IEP team meeting scheduled for July 7, 2011, dated June 20, 2011;

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- s. Correspondence from HCPS to the complainant, dated June 22, 2011, forwarding a draft IEP;
- t. Student's schedule for the 2010-2011 school year;
- u. Correspondence from the complainant containing allegations of violations of IDEA, received by MSDE on June 6, 2011 and July 20, 2011;
- v. E-mails between the complainant and MSDE staff regarding requests for information and documentation related to the allegations being investigated and the investigation procedures, dated between July 15, 2011 and July 27, 2011;
- w. Correspondence from MSDE to the complainant, dated July 25, 2011, regarding the complaint investigation procedures; and
- x. E-mails between HCPS and MSDE staff regarding requests for information and documentation related to the allegations being investigated, dated between July 25, 2011 and July 26, 2011.

**BACKGROUND:**

The student is fifteen (15) years old and is identified as a student with a specific learning disability under IDEA. The student attends XXXXXXXXXXXX, where she receives special education instruction.

During the period of time addressed by this investigation, the complainant participated in the education decision-making process, and was provided with written notice of IEP team decisions and notice of the procedural safeguards. While the student has been invited, she has not participated in IEP team meetings because the complainant has indicated that she wishes to represent her daughter at the meetings (Docs. c, e – r, u, and v).

**ALLEGATION #1                      IEP THAT ADDRESSES THE STUDENT'S NEEDS IN THE  
AREAS OF ASSISTIVE TECHNOLOGY, SPELLING,  
WRITTEN LANGUAGE, AND TRAVEL TRAINING SINCE  
JUNE 2010**

**FINDINGS OF FACT:**

**March 26, 2010 IEP Team Meeting**

- 1. The IEP in effect in June 2010 was developed on March 26, 2010. At the March 26, 2010 IEP team meeting, the following information was provided for the team's consideration:
  - a. Information from the student's education record that included results of psychological assessments conducted in 2004, 2005, and 2006, which indicated that the student's writing fluency, math fluency, and understanding of directions were in the "low average range," and that there was no evidence of a severe discrepancy between cognitive ability and performance;

- b. Information that the student was parentally-placed in a private school during the 2009-2010 school year, that she previously attended public schools located in Howard County, and that she was identified as a student with a specific learning disability, prior to attending a private school, based on her responses to interventions in the general education curriculum;
- c. Review of work samples from the private school the student attended the previous year, which demonstrated that the student makes capitalization errors and omits words, but is familiar with the use of a graphic organizer, and that she uses teacher comments to develop the paragraph body and stronger concluding sentences;
- d. Results of classroom assessments and grades from the previous year at the private school that demonstrate that the student was receiving passing grades in all classes, has weaknesses in reading fluency, needs to increase vocabulary to improve reading comprehension, and needs directions broken down or repeated;
- e. Report of the student's current math teacher that she has difficulty with math calculations, that she requires the use of a calculator, that it is helpful to have a paraeducator meet with the student to review understanding of homework assignments each day;
- f. Reports of the student's current teachers that the student is not writing the same quantity of material as her peers, but that the quality of the writing is "similar to her peers," and that her writing will improve if she increases her proofreading and editing;
- g. Report of the student's current reading teacher that her instructional reading level is "on grade level," but that the student needs to focus on vocabulary development, especially technical terms, to help with fluency when studying her course texts;
- h. The following information provided by the complainant:
  - i. The student successfully completed pre-algebra in private school, but requires the use of a calculator;
  - ii. The student uses audio books to supplement her reading;
  - iii. The student learned to write in cursive while attending private school, but may not write as quickly as her peers;
  - iv. The student has difficulty "when trying to learn to write in print," has difficulty holding a pencil, writes words and letters in different sizes, and prints letters backwards;
  - v. The student has difficulty with writing her ideas down and remembering them as she writes;

- vi. The student experiences difficulty processing information and with comprehension when she is rushed and is not provided with sufficient support;
  - vii. The student feels overwhelmed with school work; and
  - viii. The student is concerned about “confidentiality and discreetness about her disability;”
- i. The complainant’s concern that discretion about the student’s disability be maintained so that the student does not feel embarrassed or ashamed, and that the student not be blamed for forgetting things; and
  - j. The complainant’s request for an assistive technology consultation, use of a word processor, tape recorder, and voice activation technology (Doc. c).
2. On March 26, 2010, annual goals were developed for the student to do the following:
- a. Read and use strategies to understand unfamiliar vocabulary;
  - b. Use prewriting, drafting, revising, and editing strategies when composing written materials, utilizing traditional and electronic resources to edit texts for appropriate use of language, punctuation, and spelling;
  - c. Represent, analyze, model or solve math or “real world” problems with and without the use of a graphing calculator;
  - d. Increase organizational and study skills; and
  - e. Increase independent use of strategies to improve self-advocacy.

The team decided that the student would be provided with special education instruction in a general education classroom in all academic subjects, which would be co-taught by both general and special education teachers in math class, and that she would receive special education instruction in a separate special education “tutorial class” in order to provide her with assistance in completing her work (Doc. c).

3. At the March 26, 2010 IEP team meeting, the team decided that the student would be provided with access to a calculator for accuracy and fluency, and a word processor for proofing and editing written work. In response to the complainant’s request for voice activation software, the team decided that it would not work in a school environment because outside noise cannot be filtered out. The team discussed several kinds of software that would be available to the student, including text-to-speech technology, but the complainant rejected the use of these tools because the student did not like to type and does not want to look different from her peers. The complainant requested a specific type of software (Ginger), and the team agreed to take steps to get approval from the school system to use this program. The team decided that the student would be offered instruction in typing and word processing skills and that she would also be offered text-to-speech technology and the use of a tape recorder in the tutorial class (Doc. c).

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4. There is no documentation that the team considered the complainant's request for an assistive technology consultation at the March 26, 2010 team meeting (Docs. c, x, and review of the education record).
5. At the March 26, 2010 IEP team meeting, the team rejected the complainant's request that the student be provided with teacher notes prior to class because they want the student to take her own notes, which will help her focus and improve her note-taking skills. The team decided that teacher notes will be provided after the class and before the next class so that she can compare with her own notes (Doc. c).
6. At the March 26, 2010 IEP team meeting, a transition plan was developed that required that the student be provided with activities designed to help her develop organizational and time management skills for studying and a review high school programs of studies to assist her in choosing appropriate courses (Doc. c).
7. The March 26, 2010 IEP states that teachers are reminded that the student is "sensitive to having an IEP, so discretion is asked when checking with [her] or providing her with an accommodation or support." It also states that the team decided that the student would be provided with access to a more private setting for test taking in order to reduce distractions "using either the Special Education office, tutorial class, or a designated space determined by her teacher." It further states that the student may "also request her test be sent to the Special Ed office prior to the class period so she can report directly to the Special Education office" (Doc. c).
8. There is no documentation that travel training needs were identified for the student (Doc. c and review of the education record).

#### **August 11, 2010 IEP Team Meeting**

9. On August 11, 2010, the IEP team convened to consider complainant's concerns that she anticipated that the student would have difficulty with her written language in the Spanish class she was taking in the upcoming school year. The complainant provided a handout on strategies for optimizing foreign language for students with disabilities. The team decided that the current goal to improve written language would be worked on in the Spanish class and discussed that student will be provided with access to practice activities available through the internet (Doc. h).
10. At the August 11, 2010 meeting, the complainant provided a writing sample of the student's in which the teacher noted that the student did not include support for her main idea. The complainant indicated that the student avoids some ideas because she is looking for words she can spell, and requested assistive technology to address this need. The team discussed that the student was using a specific device (Franklin Speller) but that she did not rely on it because it didn't have sufficient vocabulary and brought too much attention to her. The team discussed that the software (Ginger), which had been

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requested by the complainant, had been approved by the school system, and that this program takes into consideration the content the student is writing and will be made available to the student (Doc. h).

11. At the August 11, 2010 meeting, the complainant also shared with the team an unsigned report of a private neuropsychological assessment that she had obtained. The team decided that a signed copy of the report would be obtained, that the HCPS school psychologist would review the report, and that the team would reconvene to consider the information presented in the report (Doc. h).

#### **August 20, 2010 IEP Team Meeting**

12. The IEP team reconvened on August 20, 2010. At that meeting, the complainant requested that the IEP be revised to require that the student not be given more than two (2) tests in one (1) day. The team considered that there was no information that the student had taken more than two (2) tests in a day, but agreed to the requested revision on a trial basis (Doc. i).
13. At the August 20, 2010 meeting, the complainant requested that the IEP be clarified to explain the extra time the student will be provided with to complete assignments when she is absent from class, as compared to the extra time she normally gets to complete assignments. The team agreed to clarify that with respect to extra time to complete tasks in general, teachers will make arrangements with the student depending on the task and schedules, but that when the student is absent, she will be given extended time to complete the make up work up to one (1) week from the time the teacher provides the make up work. The team was unable to complete the review of the program at this meeting and decided to continue the meeting on another date (Doc. i).

#### **September 2, 2010 IEP Team Meeting**

14. The IEP team reconvened on September 2, 2010. At that meeting, the team considered the report of the private neurological assessment obtained by the complainant. The assessment report states the following:
  - a. The student's cognitive ability falls within "the average range;"
  - b. "Moderate difficulty with aspects of working memory and organizational skills" was noted;
  - c. The student's "ability to recall semantic-related material fell in the average range;"
  - d. The student's scores in math, written language, spelling, and editing all fell within the "average range;"



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- e. The student does not demonstrate significant discrepancies between ability and reading performance, but has “core developmental symptoms consistent with dyslexia;” and
  - f. Performance in written language is significantly discrepant from her ability (Docs. b and j).
15. The report of the private neuropsychological assessment obtained by the complainant contains recommendations for the following:
- a. IEP goals addressing written expression, semantic memory, and reading fluency;
  - b. regular benchmark assessment of reading fluency;
  - c. pre-reading and pre-writing rubrics;
  - d. word banks;
  - e. extra time;
  - f. chunking of assignments;
  - g. feedback;
  - h. copies of notes and materials;
  - i. study guides;
  - j. access to books on tape;
  - k. substitution of a foreign language class with another class; and
  - l. an assistive technology evaluation (Doc. b).
16. At the September 2, 2010 meeting, the team decided that the results of the private neuropsychological assessment obtained by the complainant were consistent with the current data that indicate a written expression disorder and reading disorder. The complainant requested a separate goal to improve “semantic memory.” The team rejected the request based on reports of school staff that this need is addressed through the current goal to improve overall written expression (Doc. j).
17. At the September 2, 2010 meeting, the team agreed to test the student quarterly for benchmark reading fluency rates and to provide pre-reading and pre-writing rubrics, extra time, chunking of assignments, study guides, access to books on tape, and assistive technology, including newly purchased software to assist the student with her spelling, consistent with the recommendations in the private assessment report. However, the school-based members of the team indicated that they could not determine the basis for the recommendation in the private assessment for an assistive technology evaluation, and the team decided to reconvene with an HCPS assistive technology representative to consider that recommendation (Doc. j).

#### **September 22, 2010 IEP Team Meeting**

18. The team reconvened on September 22, 2010. At that meeting, the complainant shared materials on accommodations that may be provided to foreign language students with dyslexia. The team rejected the complainant’s request that instruction in Spanish be

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provided at a slower pace based on school staff reports that there is a lot of repetition in Spanish class and the teacher provides many website links that the student to use to access assistance. The team also rejected the complainant's request for reduced reading in Spanish based on information from school staff that there is limited reading required in that class. The complainant requested that classes have a structured routine and that a multisensory approach be used for presentation of materials in Spanish, and the team explained that this is already done. School-based members of the team also reported that the student has the option to substitute foreign language with another class. The team was unable to complete the review of the program at this meeting and decided to continue the meeting on another date (Doc. k).

### **October 8, 2010 IEP Team Meeting**

19. The team reconvened on October 8, 2010. At that meeting, the complainant shared parts of an article regarding assistive technology for students with disabilities, and expressed her belief that the student's assistive technology needs have not yet been identified and addressed. The HCPS assistive technology representative reviewed various software programs and the team decided the specific technology software that would be used on a trial basis (Doc. l).
20. There is no documentation that the team made a decision regarding the recommendation for an assistive technology evaluation, which was contained in the report of the private neuropsychology assessment obtained by the complainant (Docs. l, x, and review of the education record).

### **January 13, 2011 IEP Team Meeting**

21. On January 13, 2011, the IEP team met to address the complainant's concern that the student may require occupational therapy services. At the meeting, the complainant shared that the student had previously broken her arm, had a delay in learning how to write, and had received occupational therapy services in the past. The complainant reported that the student has used various grips for pencils and could not hold a paper tightly, and asked about whether there is computer software that can assist the student. The team recommended an assessment of the student's handwriting and keyboarding skills and the complainant indicated that she wished to think about it and was not ready to consent to such an assessment. (Docs. m and n).
22. On March 3, 2011, HCPS staff sent the complainant an e-mail reminding her that they needed her to provide written consent to conduct the handwriting assessment and reminding her of the right to obtain an independent evaluation at her own expense if she did not wish for the school system to conduct the evaluation. There is no information or documentation that the complainant has provided written consent for the handwriting assessment to be conducted (Doc. d and review of the education record).

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### **March 25, 2011 IEP Team Meeting**

23. On March 25, 2011, the team began an annual review of the IEP. At that meeting, the complainant expressed her belief that the student was not making sufficient progress with improving her spelling, grammar, and sentence construction. The complainant read to the team a document that describes the process for development of an IEP. The complainant again requested that the student not be required to take her own notes in class, and indicated that the student does not understand the information in the notes she takes in class. School staff suggested that the student could stay after school to review information with teachers and also work with the teacher in her tutorial class to ensure her understanding of material provided. The complainant requested that assistive technology be incorporated into the annual IEP goals. The team discussed that assistive technology staff will be meeting with the student and her teachers to conduct trainings on new software that the student will use. The team was unable to complete the review of the program at this meeting and decided to continue the meeting on another date (Doc. o).

### **May 27, 2011 IEP Team Meeting**

24. The team reconvened on May 27, 2011. At that meeting, the team reviewed results of an informal reading inventory conducted by the Resource Teacher on April 11, 2011. The complainant indicated that she wants to be informed prior to the administration of any such informal benchmark assessments because they are “subjective.” She also expressed concern that the student was not informed of when the inventory would be conducted, which she believed demonstrated a lack of respect for the student. The Resource Teacher reported that the student’s oral and silent fluency are slower than other students of her age. The complainant indicated that there are distractions that impact the student’s listening, and the Resource Teacher disagreed (Doc. p).
25. At the May 27, 2011 meeting, the complainant expressed concern about whether the student is receiving all of the accommodations in the class and indicated that the complainant does not understand how some of the accommodations are to be provided. In response, the student’s teachers explained how they are implementing the accommodations (Doc. p).
26. At the May 27, 2011 meeting, the complainant requested that an assistive technology evaluation be conducted or that she be provided with an independent evaluation, and that specific software be installed on the student’s home computer. The team agreed to install the software on the home computer, and decided to continue the meeting on another date to consider the remaining requests (Doc. p).

### **June 20, 2011 IEP Team Meeting**

27. The IEP team reconvened on June 20, 2011. At that meeting, the team began reviewing the annual goals, but was unable to complete the review of the IEP, and agreed to reconvene on July 7, 2011 to do so (Docs. q and r).

### **July 7, 2011 IEP Team Meeting**

28. The July 7, 2011 meeting is being rescheduled at the complainant's request because she was unable to attend that meeting (Doc. d).

### **LEGAL REQUIREMENTS:**

The IEP must include annual goals and special education instruction and related services designed to address the needs that arise from the disability, which are identified from information about the student's present levels of performance (34 CFR §300.320). Related services includes transportation, which is defined as, among other things, travel in and around school buildings (34 CFR §300.34).

When determining the levels of academic achievement and functional performance, the team must consider the evaluative data. This includes, among other things, assessment results, information from the student's teachers, and the parent's concerns. One of the factors that must be considered when determining the needs that arise from the student's disability is whether the student needs assistive technology devices and services (34 CFR §300.324).

### **DISCUSSION/CONCLUSIONS:**

#### **Assistive Technology Needs**

In this case, the complainant alleges that she requested an assistive technology consultation and that the request was rejected without the IEP team's consideration of the student's needs in this area (Doc. u). Based on Findings of Fact # 1 – 3, 9, 10, 14, 17, 19, 21, and 22, MSDE finds that the team considered the student's need for assistive technology services and devices, and developed an IEP that is consistent with the data.

However, Based on Findings of Fact # 1j, 4, and 9 – 19, MSDE finds while the complainant requested an assistive technology consultation on March 26, 2010, an assistive technology consultation was not conducted until October 8, 2010, and there is no documentation that the team rejected the request. Therefore, MSDE finds that there was a delay in addressing the complainant's concerns about the student's assistive technology needs.

Additionally, based on Findings of Fact # 18 – 28, MSDE finds that the team has not considered a recommendation for an assistive technology evaluation contained in a report of a private neuropsychological evaluation obtained by the complainant, which was reviewed by the team on September 2, 2010. Therefore, MSDE finds that violations have occurred with respect to this aspect of the allegation.

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### **Travel Training Needs**

In this case, the complainant alleges that the student has been unable to find her way around the school and has not been provided with instructions for school routine and how to successfully travel in and around the school (Doc. u and interviews with the complainant). Based on Findings of Fact # 8 - 27, MSDE finds that there is no documentation that the student has been identified with travel training needs. Therefore, this office does not find that a violation occurred with respect to this aspect of the allegation.

### **Spelling Needs**

In this case, the complainant alleges that the student has not been provided with a program that addresses the spelling needs that arise out of her specific learning disability (Doc. u). Based on Findings of Fact # 1c, 1f, 1g, 2, 3, 10, 14, 15, and 17, MSDE finds that the IEP team considered the assessment data, information from the student's teachers, and the complainant's concerns and developed an IEP that addresses the student's identified spelling needs consistent with the data.

Based on Findings of Fact #23 – 28, MSDE further finds that the team continues to review the program in order to address the complainant's continuing concerns about the student's spelling skills. Therefore, this office does not find that a violation occurred with respect to this aspect of the allegation.

### **Written Language Needs**

In this case, the complainant alleges that the student has not been provided with a program that addresses the written language needs that arise out of her specific learning disability, specifically, that the program does not address the student's need to learn cursive writing. The complainant asserts that, as a result, the student is unable to even sign her name. Additionally, the complainant alleges that while the student demonstrates strength in verbal communication, she exhibits weakness in written expression, which has not been addressed by the IEP (Doc. u and interviews with the complainant).

Based on Findings of Fact # 1a, 1c, 1f, 1h, 1j, 2, 3, 5, 9,10, 12 – 17, 21, and 22, MSDE finds that the IEP team considered the assessment data, information from the student's teachers, and the complainant's concerns and developed an IEP that addresses the student's identified written language needs consistent with the data. Based on Findings of Fact #23 – 28, MSDE further finds that the team continues to review the program in order to address the complainant's continuing concerns about the student's written language skills. Therefore, this office does not find that a violation occurred with respect to this aspect of the allegation.

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### **Additional Discussion**

This office understands that the complainant does not agree with the IEP team's decisions about the student's program. The United States Department of Education, Office of Special Education Programs (OSEP), requires that, during the investigation of an allegation that a student has not been provided with an appropriate educational program under IDEA, the State educational agency must review the procedures used by a school system to reach determinations about the program.

Additionally, the State educational agency must also review the evaluative data to determine if decisions made by the IEP team are consistent with the data. However, the State educational agency may not overturn the IEP team's decisions (OSEP Letter #00-20, July 17, 2000 and Analysis of Comments and Changes to IDEA, *Federal Register*, Vol. 71, No. 156, p.46601, August 14, 2006).

Where this office finds that procedural violations have occurred in identifying the student's assistive technology needs, MSDE will require HCPS to take corrective action to include ensuring that the team follows proper procedures in identifying these needs (See Corrective Actions/Timelines Section of this LOF). With respect to those areas in which this office did not find that a procedural violation occurred, it may not overturn the team's decisions. However, the complainant maintains the right to resolve any continuing dispute regarding these matters by requesting mediation or by filing a due process complaint.

### **ALLEGATION #2 - IEP IMPLEMENTATION SINCE JUNE 2010**

#### **FINDINGS OF FACT:**

29. The following documents that the student has been provided with the special education instruction and accommodations required by the IEP since June 2010:
  - a. Reports of the student's progress toward achieving the annual IEP goals, dated June 23, 2010, which document that the student made sufficient progress toward achieving all of the goals;
  - b. Reports of the student's progress toward achieving the goal to increase organizational and study skills for the 2010-2011 school year, which indicate that by the date of the report made on April 11, 2011, the student had begun to make sufficient progress after having worked with her parents and teacher to develop a new system for organizing her papers;
  - c. Reports of the student's progress toward achieving the remaining goals during the 2010-2011 school year, which document that the student made sufficient progress toward achieving the goals;
  - d. E-mail from the Instructional Team Leader to teachers, dated August 30, 2010, forwarding a list of students who have an IEP for the teachers to check to ensure that they have an IEP for each student listed;

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- e. E-mail from the student's Special Education Teacher to the student's teachers, dated September 1, 2010, reminding them to provide the student with an extra set of books to take home and to ensure that the student is provided with copies of any notes in a discreet manner;
- f. E-mail from the complainant to the Instructional Team Leader, dated September 7, 2010, stating that the student needs books on tape for English class because she has been assigned 88 pages to read and that she does not know who to contact to ensure that they are provided;
- g. E-mail from the Special Education Paraeducator to the Instructional Team Leader and the student's Special Education Teacher, dated September 7, 2010, documenting that he had provided the student with her first audio book for English class and that he had copied the rest of the books the student will need during the year;
- h. E-mail from the complainant to HCPS staff, dated September 9, 2010, indicating that the student received her first book on tape, but that she had been assigned to read 88 pages of the first book before she received the tape;
- i. E-mail from the student's Special Education Teacher to the student's teachers, dated September 20, 2010, reminding them that a copy of all text books must be provided to the student to take home, that the student should be provided with notes in class, and that the student is to be provided with make up work to complete within a week when she is absent. The message also indicates that the student's parents have asked that they communicate any concerns to them via e-mail as soon as a problem arises;
- j. E-mail from the complainant to HCPS staff, dated October 3, 2010 indicating that the complainant has concerns about how the accommodation of the provision of notes is being provided. Specifically, the complainant expressed concern that the student not be required to recopy notes provided to her by her teachers;
- k. E-mail from the student's Special Education Teacher to the student's teachers, dated October 11, 2010, informing them of the student's absence from school that day, and reminding them to have make up work ready for the student upon her return to school;
- l. E-mail from the student's Special Education Teacher to the student's teachers, dated October 17, 2010, providing them with a chart that contains all of the accommodations required by the student's IEP, and indicating that they could use the chart to document the provision of accommodations to the student;

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- m. E-mail from the student's Special Education Teacher to the complainant, dated October 29, 2010, indicating that the student was being provided with extra time to take a test in biology class because the student did not feel ready to take the test when it was administered;
- n. E-mail from the student's Special Education Teacher to the student's teachers, dated November 3, 2010, reminding them of the accommodations to be provided to the student and discussing plans for arranging for the student to be provided with extra time to complete any exams that the student does not complete;
- o. E-mail from the student's Special Education Teacher to the complainant, dated November 3, 2010, in response to concerns raised by the complainant about inconsistent provision of notes in class and about the fact that the complainant does not have regular access to e-mail and wants to be contacted by telephone within 24 hours of any information. In the Special Education Teacher's e-mail to the complainant, she discussed plans for arranging for the student to be provided with extra time to complete exams, clarified that the student has been provided with notes in her American Government class when they are generated, and explained that notes are not used every day in that class;
- p. E-mail from the student's Special Education Teacher to the student's teachers, dated January 12 and 18, 2011, reminding them of the accommodations to be provided to the student and of the need to contact the parents promptly if there are any concerns or information about the student's classroom performance;
- q. E-mail from the principal to the complainant, dated January 21, 2011, documenting that the student's teachers have been making recommendations for courses for the student to take, indicating that the Special Education Teacher will be meeting to discuss the recommendations with the student the following week, and offering to meet with the complainant to discuss the matter, as well;
- r. The student's class schedule for the 2010-2011 school year, which indicates that she receives ninety (90) minutes of special education instruction in a separate special education "tutorial class" every other day; and
- s. E-mail provided to MSDE by the complainant on July 20, 2011 indicates that the complainant has concerns about the manner in which accommodations are being provided to the student. For example, the complainant states that when providing repetition of directions, teachers should use different vocabulary words to attempt to provide the student with clarification (Docs. c, d, k, m, t, and v).



### **LEGAL REQUIREMENTS:**

The public agency must ensure that special education and related services, including transition services, as well as accommodations and supplementary aids and services, are available to each student in accordance with the IEP. In order to ensure IEP implementation, the public agency must make the IEP available to each teacher and provider responsible for implementation of the IEP (34 CFR §§300.101 and .323).

### **DISCUSSION/CONCLUSIONS:**

#### **Accommodations**

In this case, the complainant asserts that she has had to express concerns to school staff over a long period of time before they would begin to provide the student with the accommodations required by the IEP. Specifically, the complainant alleges that the following supports were not provided consistently or in a timely manner: extra time to complete assignments, books on tape, a second set of books to take home, and teacher notes (Docs. u, w, and interviews with the complainant).

Based on Findings of Fact # 1 – 26, 29 a – p, and 29s, MSDE finds that there is documentation that:

- the student's teachers have had access to the IEP;
- the IEP team has addressed concerns the complainant has expressed about how accommodations are being provided;
- school staff have taken steps to ensure that the student's teachers understand their roles in implementing the accommodations in response to the complainant's continuing concerns about how accommodations are being provided; and
- the annual IEP goals are being addressed.

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

#### **Teacher Support**

The complainant asserts that the student has not had access to support from teachers that she requires in order to understand the material presented to her in class (Doc. and interviews with the complainant). Based on Findings of Fact # 2, 18, 23, 25, 29 a – d, 29m, and 29r, MSDE finds that there is documentation that the student has been provided with supports by teachers, as well as access to additional assistance in tutorial class, as required by the IEP. Therefore, MSDE does not find that a violation occurred with respect to this aspect of the allegation.

### **Transition Services**

The complainant also believes that the student has not been provided with the transition services required by the IEP (Doc. and interviews with the complainant). Based on Findings of Fact # 2, 6, 29a – d, and 29q, MSDE finds that there is documentation that the student has been provided with the transition services required by the IEP. Therefore, this office does not find that a violation occurred with respect to this aspect of the allegation.

### **ALLEGATION # 3 - ESY DETERMINATION FOR THE SUMMER OF 2010**

#### **FINDINGS OF FACT:**

30. On June 3 and 17, 2010, the team convened to consider the student's need for ESY services. The team made the following decisions:
  - a. The student's IEP included annual goals related to life skills, including goals to improve reading comprehension, math reasoning, and written language;
  - b. There was not a likely chance of substantial regression of critical life skills caused by the normal school break and failure to recover those lost skills in a reasonable time because following Spring Break, the student did well on a High School Assessment (HSA) and demonstrated consistent progress without evidence of regression after absences from school;
  - c. The student was demonstrating a degree of progress toward mastery of the IEP goals related to critical life skills based on her performance on county-wide assessments and the grades she earned;
  - d. There was no presence of emerging skills or breakthrough opportunities;
  - e. There were no significant interfering behaviors exhibited by the student;
  - f. The nature and severity of the student's disability did not warrant ESY services based on her demonstrated progress; and
  - g. There were no other special circumstances that indicated a need for ESY services (Docs. e and f).
  
31. Based on the above information, the team determined that the benefits the student received from her educational program during the regular school year would not be significantly jeopardized if the student was not provided with ESY services. The complainant disagreed with the team's decision and the team's interpretation of the data considered as a basis for the decision (Docs. e and f).

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32. On June 18, 2010, HCPS informed the complainant, in writing, that while the student does not qualify for ESY services, because the decision was not made in a timely manner, they would “provide instruction to [the student] at the ESY site. HCPS provided information on the dates and the place and offered bus transportation as well (Doc. g).

### **LEGAL REQUIREMENTS:**

ESY services are an individualized extension of specific services beyond the regular school year that are designed to meet specific goals included in the student’s IEP (34 CFR §300.106 and COMAR 13A.05.01.03B(26)). At least annually, the IEP team must determine whether the student requires ESY services in order to ensure that the student is not deprived of a free appropriate public education (FAPE) by virtue of the normal break in the regular school year (Md. Ann. Code, Education Art. §8-405(b)). When determining whether ESY services are required for the provision of FAPE, the IEP team must consider the following:

1. Whether the student’s IEP includes annual goals related to critical life skills;
2. Whether there is a likelihood of substantial regression of critical life skills caused by the normal school break and a failure to recover those lost skills in a reasonable time;
3. The student’s degree of progress toward mastery of the annual IEP goals related to critical life skills;
4. The presence of emerging skills or breakthrough opportunities;
5. Interfering behaviors;
6. The nature and severity of the disability; and
7. Special circumstances (COMAR 13A.05.01.08B (2) (b)).

After considering the required factors, the IEP team must decide whether the benefits that a student received from the education program during the regular school year will be *significantly jeopardized* (emphasis added) if the student is not provided with ESY services (MM v. School District of Greenville Co. (S.C.), 303 F3d. 523, 37 IDELR 183 (4<sup>th</sup> Cir. 2002)). The school system must provide written notice to the parent of the team’s decisions regarding the student’s need for ESY services. This includes informing the parent of the decisions and providing the parent with an explanation of the bases for the decisions (34 CFR §300.503(b)).

There is no specific legal requirement as to when the ESY decision must be made. However, the IEP team meeting must be scheduled early enough in the school year to ensure that parents can meaningfully exercise their due process rights if they wish to challenge an ESY decision (COMAR 13A.05.01.07B). This means that the determination concerning ESY services must be made in such a manner that if a due process hearing is needed to resolve a disagreement, it can be conducted and a decision rendered early enough for the services to be provided.

### **DISCUSSION/CONCLUSIONS:**

In this case, the complainant alleges that the team determined that the student required ESY services, but that it did not determine the specific services that would be provided to assist the student in achieving the annual goals. The complainant asserts that as a result, the student was placed in a

program that did not offer instruction that was designed to address the student's annual IEP goals (Doc. u).

Based on Findings of Fact #30 - 32, MSDE finds that the team did not, in fact, determine that the student requires ESY services, and therefore, was not required to identify the goals to be addressed and the services needed to assist the student in achieving those goals. Based on those Findings of Fact, MSDE further finds that the IEP team considered all of the required factors when considering the student's need for ESY services, used the correct standard when making the determination, and that the decision was consistent with the data.

However, based on those Findings of Fact, MSDE also finds that the ESY decision was not made in a timely manner, and that a violation occurred. Notwithstanding the violation, based on Finding of Fact #32, MSDE finds that the school system provided the complainant with a remedy for the violation. Therefore, no additional student-specific corrective action is required.

**ALLEGATION # 4 - PROVISION OF DOCUMENTS PRIOR TO IEP TEAM MEETINGS SINCE JUNE 2010**

**FINDINGS OF FACT:**

33. The following demonstrates the provision of documents to the complainant in advance of the IEP team meetings that have been convened since June 2010:

June 3 and 17, 2010 IEP Team Meetings

- a. An E-mail from the Instructional Team Leader to the complainant, dated June 2, 2010, indicates that the Instructional Team Leader explained to the complainant that there were no documents that were to be considered at the meeting scheduled for June 3, 2010, and that the purpose of the meeting was to consider the questions listed in the ESY section of the IEP. The e-mail served as a response to the complainant's request for documentation of the services provided through the ESY program in advance of the June 3, 2010 meeting;

August 11 and 20, 2010 IEP Team Meetings

- b. The written summary of the August 20, 2010 IEP team meeting documents that a draft IEP was provided to the complainant with the written invitation to the August 11, 2010 meeting, which was sent to the complainant on July 30, 2010;

September 2, 2010 IEP Team Meeting

- c. The written summary of the IEP team meeting convened on August 11, 2010 documents that the complainant had the report of the private neuropsychological assessment discussed at the September 2, 2010 meeting;

September 22, 2010 IEP Team Meeting

- d. There is no information or documentation that the IEP team reviewed documents at the meeting held on September 22, 2010;

October 8, 2010 IEP Team Meeting

- e. An e-mail from the student's Special Education Teacher to the complainant, dated October 1, 2010, documenting that a draft IEP was sent to the complainant in advance of the meeting held on October 8, 2010;

January 13, 2011 IEP Team Meeting

- f. There is no information or documentation that the IEP team reviewed documents at the meeting held on January 13, 2011;

March 25, 2011 IEP Team Meeting

- g. An e-mail from the student's Special Education teacher to the complainant, dated March 18, 2011, documenting that a draft IEP was sent to the complainant in advance of the meeting held on March 25, 2011;

May 27, 2011 IEP Team Meeting

- h. An e-mail from the student's Special Education Teacher to the complainant, dated April 26, 2011, documents that the results of a formal reading inventory were provided to the complainant in advance of the meeting held on May 27, 2011;
- i. An e-mail from the student's Special Education Teacher to the complainant, dated May 5, 2011, documents that a draft IEP was sent to the complainant in advance of the meeting held on May 27, 2011;

June 20, 2011 IEP Team Meeting

- j. E-mails from the student's Special Education Teacher to the complainant, dated June 3 and 6, 2011, documents that a draft IEP was sent to the complainant in advance of the meeting held on June 20, 2011;

July 7, 2011 IEP Team Meeting

- k. E-mails from the student's Special Education Teacher to the complainant, dated June 15 and 20, 2011, documents that a draft IEP, with the proposed revisions highlighted, was sent to the complainant in advance of the meeting scheduled for July 7, 2011; and
- l. Letter from the Instructional Facilitator to the complainant, dated June 22, 2011, documenting that a draft IEP was provided to the complainant in advance of the meeting scheduled for July 7, 2011 (Docs. d, h, i, k, l, m, n, o, p, q, and s).

**LEGAL REQUIREMENTS:**

At least five (5) business days before a scheduled IEP team meeting, parents must be provided with an accessible copy of each assessment, report, data chart, draft IEP, or other document that is planned to be discussed at the meeting, except in the event of extenuating circumstance. In the event of an extenuating circumstance, school staff must document the circumstance and communicate that information to the parents (Md. Code Ann., Educ., §8-405 (2010)).

**DISCUSSION/CONCLUSIONS:**

Based on Findings of Fact # 1 – 28 and 33, MSDE finds that the complainant was provided with copies of documents considered by the IEP team at least five (5) business days before team meetings. Therefore, this office does not find that a violation occurred with respect to this allegation.

**ALLEGATION # 5 - CONFIDENTIALITY**

**FINDINGS OF FACT:**

34. The following document that the complainant has indicated her belief that the student's confidentiality was violated because the student's classmates were aware of the provision of special education services to the student:
  - a. March 26, 2010 IEP, which indicates that the complainant requested that services be provided in a manner in which the student's classmates will not be aware that services are being provided to the student;
  - b. E-mail from the student's special education teacher to the student's teachers, dated March 29, 2011, reminding them of the need to be discreet when providing supports to the student because the student does not want other students to see her receiving assistance;

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- c. E-mail from the complainant to the student's special education teacher and copied to HCPS officials, responding to an October 20, 2010 e-mail from the student's special education teacher, in which the complainant states that the student's confidentiality would be compromised if a meeting between the student and assistive technology staff were to be held in the classroom, and that the meeting should be held outside of the school. The complainant further states that such "breaches of confidentiality" have already occurred "on more than one occasion" at the high school;
  - d. Correspondence from the complainant received by MSDE on July 20, 2011, which indicates that the complainant believes that a breach of the student's confidentiality occurred when the student was asked to take a practice HSA in the hallway to ensure test security because her classmates were reviewing the test, which they had already taken; and
  - e. An electronic mail message provided to MSDE by the complainant on July 20, 2011, which indicates that the complainant believes the student's confidentiality was breached when the student's teacher told the student in the presence of other students that she could take extra time to complete an assignment in her tutorial class (Docs. c, d, u, and v).
35. On October 15, 2010, the complainant sent HCPS staff an e-mail expressing concern that the teacher of the student's sibling, who is not a teacher of this student, told the sibling that she should be helping the student who is struggling in her Spanish class (Doc. d).
  36. On October 20, 2010, the principal sent the complainant an e-mail responding to the complainant's concern about the sibling's interaction with her teacher, stating, "This concern has been addressed" (Doc. d).
  37. In an e-mail from the complainant to HCPS staff, dated June 22, 2011, the complainant indicates that a substitute teacher in the student's biology class shared with the class all of the student's grades, including the student's grade (Doc. d).
  38. There is no documentation of correspondence between school staff and the Howard County Board of Education Ombudsman regarding the student during the time period addressed by this complaint (Review of the education record).
  39. School staff and the complainant report that, during the 2010-2011 school year, the student's education record was taken to the school Guidance Office, and that the complainant was provided with the opportunity to review the record in the Guidance Office. School staff further report that Guidance Office staff were assigned to transmit any questions the complainant had about the record from her review to the Special Education Office (Doc. u and interviews with the complainant and school staff).

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40. Correspondence between school staff and the complainant was copied to school system staff, including the student's teachers, members of the IEP team, and HCPS Central Office staff who were working with school staff to ensure the provision of services to the student (Docs. d, n, s, and review of the education record).
41. The Howard County Board of Education, Policy #9050, Student Records and Confidentiality, states the following:
  - a. A school official is a person employed by HCPS, a person serving on the school board, or a person or company with whom HCPS has contracted to perform a special task;
  - b. A school official has a legitimate educational interest in a student record if the official needs the review the record in order to conduct professional responsibilities; and
  - c. Student records include any information directly related to a student, including, among other things, records of subject performance and IEP information.

The Policy states that the school system must notify parents and students annually of the rights related to the inspection, review, amendment, and disclosure of student records, as well as the right to file complaints related to these rights (Doc. a).

#### **LEGAL REQUIREMENTS:**

Parental consent must be obtained before personally identifiable information is disclosed to parties, unless the information is contained in education records and the disclosure is authorized without parental consent by the Family Educational Rights and Privacy Act (FERPA) (34 CFR §99.30). Pursuant to FERPA, prior consent is not required to disclose information under several specific circumstances, which, among others, include disclosure to other school officials, including teachers, within the agency or institution whom the agency or institution has determined to have legitimate educational interests (34 CFR §99.31).

If the educational agency has a policy of disclosing personally-identifiable information to other school officials, as indicated above, it must specify the criteria for determining who constitutes a school official and what constitutes a legitimate educational interest. Notice of this information must be provided to parents on an annual basis (34 CFR §99.31).

Disclosure means to permit access to or the release, transfer or other communication of personally identifiable information contained in education records by any means to any party except the party identified as the party that provided or created the record. This includes disclosing information orally, in writing, or by electronic means (34 CFR §99.3).



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### **DISCUSSION/CONCLUSIONS:**

In this case, the complainant alleges the following:

- Correspondence between her and school staff was copied to other school staff who did not have an interest in the information provided about the student;
- School staff contacted the Howard County Board of Education Ombudsman for assistance regarding the student's education "via a mass email" that went to individuals with whom the information should not have been shared;
- The student's teachers have not ensured that the student's classmates are unaware that the student receives special education services;
- The student's education record was left in the Guidance Office for the complainant to review, which was accessible to school staff in the Guidance Office who did not have a legitimate educational interest in the information; and
- The student's teachers have informed teachers who are not teachers of this student that the student is identified with a disability. Specifically, a Spanish teacher of this student's sibling, who is not a teacher of this student, approached the sibling in the hallway in front of other students about providing assistance to this student because she is struggling in her Spanish class (Doc. u and interviews with the complainant).

Based on Findings of Fact #34 and 41, MSDE finds that the provision of special education services to the student in the presence of other students does not constitute the disclosure of the student's IEP information to those students. However, based on Findings of Fact #37 and 41, MSDE finds that the sharing of the student's grades with her classmates did constitute a disclosure of the student's record without the required parental consent. Therefore, MSDE finds that a violation occurred with respect to this aspect of the allegation.

Based on Finding of Fact #41, MSDE finds that the school system has a policy in place that describes how parents and students will be informed annually of the criteria for determining school officials with a legitimate educational interest. Based on Findings of Fact #38 - 41, MSDE finds that the school officials copied on correspondence between the complainant and school staff had a legitimate educational interest in the student's record, and thus, parental consent was not required before copying them on the correspondence.

However, based on Findings of Fact # 35, 36, and 41, MSDE finds that there is documentation that information was disclosed through other means to a school official who did not have a legitimate educational interest in the student's personally-identifiable information, as specified by the Howard County Board of Education. Therefore, MSDE finds that a violation occurred with respect to this aspect of the allegation.

**ALLEGATION # 6 - ACCESS TO THE EDUCATION RECORD**

**FINDINGS OF FACT:**

42. The following is documentation of a request from the complainant for access to the student's education record and school staff's response:
- a. An e-mail from the principal to the complainant, dated February 17, 2011, in which the principal responded to a request by the complainant to review the education record. In the e-mail, the principal states, "I would be happy to arrange for you to review the records. Please let me know if Tuesday or Wednesday of next week at 7:00 a.m. are good for you;"
  - b. An e-mail from the complainant to the principal, dated February 25, 2011, in which the complainant apologized for not getting information to the principal regarding the date she wished to review the record, and requested that a date be set for the following week;
  - c. An e-mail from the principal to the complainant, dated March 4, 2011, asking the complainant to inform her of the date which she would like to review the record; and
  - d. An e-mail from the principal to the complainant, dated March 5, 2011, indicating that the principal looks forward to the complainant's visit on Tuesday or Wednesday (specific dates not listed) to review the record.

There is no documentation of when the complainant first requested access to the record, but the next IEP team meeting was held on March 25, 2011 (Doc. d and review of e-mails maintained by the principal at XXXXXXXXXXXX).

43. The following is documentation of another request from the complainant for access to the student's education record and school staff's response:
- a. An e-mail from the principal to the complainant, dated June 7, 2011, offering a date for the complainant to review the record, and an electronic mail message response from the complainant confirming the date offered.

There is no documentation of when the complainant made the request to review the record, but the next IEP team meeting was held on June 20, 2011 (Review of e-mails maintained by the principal at XXXXXXXXXXXXXXXXXXXX).

44. There is no documentation that school staff denied a request by the complainant for access to the record, and school staff report that the record was available to the team

during each IEP team meeting (Review of the education record and interview with school staff).

### **LEGAL REQUIREMENTS:**

The parents of a student with a disability must be afforded the opportunity to inspect and review any education records of the student's that are collected, maintained, or used by the public agency. The public agency must comply with a request without unnecessary delay and before any meeting regarding an IEP, or any due process hearing, and in no case more than forty-five (45) days after the request is made (34 CFR §300.613).

### **DISCUSSION/CONCLUSIONS:**

In this case, the complainant alleges that school staff have not made the student's education record accessible to her in a timely manner in response to her requests. Additionally, the complainant asserts that she has requested that school staff make the record available to her at IEP team meetings as well, and that those requests were rejected (Doc. and interviews with the complainant).

Based on Findings of Fact # 42 and 43, MSDE finds that there is documentation that school staff made the record available to the complainant prior to IEP team meetings. Based on Finding of Fact #44, MSDE finds that there is no documentation that school staff have denied the complainant's requests for access to the record. Therefore, MSDE does not find that a violation occurred with respect to this allegation.

### **CORRECTIVE ACTIONS/TIMELINES:**

#### **Student-specific**

MSDE requires HCPS to provide documentation by the start of the 2011-2012 school year that the IEP team convened and considered the recommendation for an assistive technology evaluation contained in the private neuropsychological assessment obtained by the complainant, and that HCPS has taken steps to ensure that an evaluation is initiated if the team decides that additional data is required.

MSDE requires HCPS to provide documentation by November 1, 2011 that the IEP team has determined whether the delay in considering the complainant's request for an assistive technology consultation and the recommendation for an assistive technology evaluation negatively impacted the student's ability to benefit from her education program. If the team finds that there was a negative impact, it must also determine the nature and amount of *compensatory services*<sup>2</sup> necessary to redress the violations.

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<sup>2</sup> Compensatory services, for the purposes of this letter, mean the determination by the IEP team as to how to remediate the denial of appropriate services to the student (34 CFR §300.151).

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### **School-based**

MSDE requires HCPS to provide documentation by November 1, 2011, of the steps it has taken to determine if the violations identified in the Letter of Findings (LOF) are unique to this case or if they represent a pattern of noncompliance at XXXXXXXX. Specifically, the school system is required to conduct a review of student records, data, or other relevant information to determine if the regulatory requirements are being implemented and must provide documentation of the results of this review to MSDE. If the school system reports compliance with the requirements, MSDE Complaint Investigation and Due Process Branch staff will verify compliance with the determinations found in the initial report.

If the school system determines that the regulatory requirements are not being implemented, the school system must identify the actions that will be taken to ensure that the violations do not recur. The school system must submit a follow-up report to document correction within ninety (90) days of the initial date that the school system determines non-compliance. Upon receipt of this report, MSDE will re-verify the data to ensure continued compliance with the regulatory requirements. Additionally, the findings in the LOF will be shared with MSDE's Office of Quality Assurance and Monitoring for Continuous Improvement for their consideration during monitoring of HCPS in the future.

Documentation of all corrective action taken is to be submitted to this office to: Attention: Chief, Complaint Investigation/Due Process Branch, Division of Special Education/Early Intervention Services, MSDE.

### **TECHNICAL ASSISTANCE:**

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

Please be advised that both parties 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 fact or conclusions reached in this LOF. 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 LOF. If additional information is provided, it will be reviewed and MSDE will determine if a reconsideration of the conclusions is necessary. Upon consideration of this additional documentation, this office may leave its findings and conclusions intact, set forth additional findings and conclusions, or enter new findings and conclusions. Pending the decision on a request for reconsideration, the school system must implement any corrective actions consistent with the timeline requirements as reported in this LOF.

Questions regarding the findings, conclusions and corrective actions contained in this letter should be addressed to this office in writing. The complainant and the school system maintain the right to request mediation or to file a due process complaint, if they disagree with the identification, evaluation, placement, or provision of FAPE for the student, including issues

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subject to a State complaint investigation, consistent with IDEA. MSDE recommends that this LOF be included with any request for mediation or due process.

Sincerely,

Marcella E. Franczkowski, M.S.

Assistant State Superintendent

Division of Special Education/Early Intervention Services

MEF:am

cc : Bernard J. Sadusky  
Sydney L. Cousin  
Janet Zimmerman  
Ashley Van Cleef  
XXXXXXXXXXXXX  
Martha J. Arthur