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June 1, 2012

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

RE: XXXXX  
Reference: #12-077

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 April 11, 2012, the MSDE received a complaint from Ms. XXXXXXXXXXX, hereafter, “the complainant,” on behalf of her foster daughter,<sup>1</sup> the above-referenced student. In that correspondence, the complainant alleged that the Baltimore City Public Schools (BCPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to the above-referenced student. The MSDE investigated the following allegations:

1. The BCPS has not ensured that the Individualized Education Program (IEP) addresses the student’s social/emotional/behavioral needs since April 2011,<sup>2</sup> in accordance with 34 CFR §300.324;
2. The BCPS has not ensured that the student has been provided with the special education instruction required by the IEP since April 2011,<sup>2</sup> in accordance with 34 CFR §§300.101 and .323; and

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<sup>1</sup> The complainant has been appointed to serve as the student’s parent surrogate under the IDEA (Doc. b).

<sup>2</sup>The complaint alleged violations dating to the start of the 2010-2011 school year. However, she was informed, in writing, on April 17, 2012, that this office has authority to investigate allegations of violations that occurred not more than one (1) year from the date the complaint is received, in accordance with 34 CFR §300.153.

3. The BCPS did not ensure that the student was provided with special education instruction in a “highly structured” setting as required by the IEP since December 2011, in accordance with 34 CFR §§300.101 and .323.

**INVESTIGATIVE PROCEDURES:**

1. Ms. Kathy Stump, Education Program Specialist, MSDE, was assigned to investigate the complaint.
2. On April 13, 2012, the MSDE sent a copy of the complaint, via facsimile, to Dr. Kim Hoffmann, Interim Executive Director of Special Education, BCPS; and Ms. Nancy Ruley, Associate Counsel, BCPS.
3. On April 16, 2012, Ms. Stump conducted a telephone interview with the complainant to clarify the allegations to be investigated.
4. On April 17, 2012, the MSDE sent correspondence to the complainant that acknowledged receipt of the complaint and identified the allegations subject to this investigation. On the same date, the MSDE notified Dr. Hoffmann of the allegations and requested that her office review the alleged violations.
5. On April 27, 2012, Ms. Stump and Ms. Christine Hartman, Education Program Specialist, MSDE, conducted a site visit at XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX to review the student’s educational record, and interviewed the following school staff:
  - a. Ms. XXXXXX, School Psychologist;
  - b. Ms. XXXXXXXX, IEP Team Chairperson; and
  - c. Ms. XXXXXXXX, Special Education Teacher.

Ms. Ruley attended the site visit as a representative of the BCPS and to provide information on the BCPS policies and procedures, as needed.

6. On April 30, 2012, the complainant provided the MSDE with additional documentation to be considered during the investigation, via facsimile.
7. On May 4, 2012, Ms. Stump conducted a telephone conference call with the following school staff from XXXXXXXXXXXXXXXXXXXXXXXX:
  - a. Mr. XXXXXXXX, Special Education Teacher;
  - b. Ms. XXXXXX, Assistant Principal; and
  - c. Ms. XXXXXXXX, Special Education Teacher.

Ms. Ruley participated in the telephone conference as a representative of the BCPS and to provide information on the BCPS policies and procedures, as needed.

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8. On that same date, the BCPS provided the MSDE with documentation from the student's educational record, via electronic mail (e-mail).
9. On May 14, 2012, the complainant provided the MSDE with additional documentation to be considered during the investigation, via facsimile.
10. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
  - a. Correspondence and attachments from the complainant to MSDE, received on April 11, 2012;
  - b. Correspondence from the BCPS to the complainant, dated September 7, 2010;
  - c. IEP, dated January 19, 2011;
  - d. Special Education Progress Report, dated April 15, 2011;
  - e. IEP, dated April 27, 2011;
  - f. Notice and Consent for Assessment form, dated April 27, 2011;
  - g. Educational Assessment Report, dated May 26, 2011;
  - h. IEP, dated June 9, 2011;
  - i. IEP progress reports for the 2010-2011 school year;
  - j. Functional Behavioral Assessment, dated June 9, 2011;
  - k. Correspondence from the complainant to school staff, dated September 12, 2011;
  - l. Educational Progress Report form, dated October 6, 2011;
  - m. IEP, dated October 6, 2011;
  - n. Educational Progress Report form, dated December 7, 2011;
  - o. IEP, dated December 7, 2011;
  - p. Notice and Consent for Assessment form, dated December 7, 2011;
  - q. Educational Assessment Report, dated December 22, 2011;
  - r. Discharge Educational Recommendations form, dated January 17, 2012;
  - s. Student Observation Report, dated January 23, 2012;
  - t. Psychological Assessment report, dated February 7, 2012;
  - u. Educational Progress Report, dated February 13, 2012;
  - v. Functional Behavioral Assessment, dated February 13, 2012;
  - w. IEP, dated February 13, 2012;
  - x. Behavioral Intervention Plan, dated February 13, 2012;
  - y. Enrollment form, dated March 14, 2012;
  - z. IEP, dated March 28, 2012;
  - aa. Recommendation from Sheppard Pratt, dated April 9, 2012;
  - bb. IEP, dated May 3, 2012;
  - cc. Special Education Teacher's service provider log for the 2011-2012 school year;
  - dd. IEP progress reports for the 2011-2012 school year; and
  - ee. Student's attendance data for the 2011-2012 school year.

**BACKGROUND:**

The student is six (6) years old. She is identified as a student with an emotional disability under the IDEA, and has an IEP that requires that she be provided with special education instruction and related services.

During the 2010-2011 school year, the student attended kindergarten in a self-contained special education early childhood program at XXXXXXXXXXXXXXXXXXXXXXXX. At the start of the 2011-2012 school year, the student began attending first (1<sup>st</sup>) grade at XXXXXXXXXX XXXXXXXXXXXXXX (XXXXXXXXXXXXXXXX), the school she would otherwise attend if she were not disabled. The student attended XXXXXXXXXXXXXXX until March 14, 2012, when the IEP team determined that she required more supports than were available at XXXXXXXXXXXXXXX. As a result of this change in placement, the student began to attend XXXXXXXXXXXXXXX XXXXXXXXXXXXXX (XXXXXXXXXXXXXXXX).

During the period of time addressed by this investigation, the complainant participated in the education decision-making process and was provided with written notice of the procedural safeguards (Docs. a, c, e, f, h, m, o, w, y, z, bb, ee, and interviews with the complainant and school staff).

**LEGAL REQUIREMENTS**

**IEP Development and Placement in the Least Restrictive Environment**

In developing each student's IEP, the public agency must ensure that the IEP team considers the strengths of the student, the concerns of the parents for enhancing the education of the student, the results of the most recent evaluation, and the academic, developmental, and functional needs of the student. In the case of a student whose behavior impedes the student's learning or that of others, the team must consider the use of positive behavioral interventions and supports and other strategies, to address that behavior (34 CFR §300.324).

In determining the educational placement of a student with a disability, the public agency must ensure that the placement decision is made by the IEP Team. The placement decision must be made in conformity with the least restrictive environment (LRE) provisions, determined at least annually, based on the student's IEP, and as close as possible to the student's home (34 CFR § 300.116 and COMAR 13A.05.01.10(C)(1)).

Unless the IEP of a student requires some other arrangement, the student is to be educated in the school setting that the student would attend if not disabled. A student with a disability is not removed from education in an age-appropriate regular classroom setting solely because of needed modifications in the general curriculum. In selecting the LRE, in which the IEP can be implemented, the IEP team must consider any potential harmful effect on the student or on the quality of services that the student needs (34 CFR § 300.116 and COMAR 13A.05.01.10(C)(1)).

### **IEP Implementation**

The public agency is required to ensure that the student is provided with the special education and related services in the educational placement required by the IEP (34 CFR §300.101). In this case, the complainant alleges that the student has not been provided with special education instruction designed to assist her in achieving the annual IEP goals. Specifically, the complainant alleges that the student is provided with work that is too difficult for her and is not at her instructional level. Additionally, the complainant alleges that the student has not been receiving special education instruction in a “highly structured” classroom as required by the IEP since December 2011 (Doc. a and interviews with the complainant).

### **ALLEGATIONS AND ANALYSIS**

The allegations raised in the complaint are addressed for each of the identified time periods as follows:

#### **April 2011 – Start of the 2011-2012 School Year**

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

1. The IEP in effect in April 2011 states that the student has a developmental delay and that she has academic needs that arise out of the disability. The data indicates that the student functions at a “four-year-old” level. She cannot identify the letters of the alphabet or identify the sounds the letters make. The student is able to count up to five (5) objects and identify the tallest shape in a group. However, she is not able to identify the group with more objects, identify shapes, or solve simple word problems by adding or subtracting even with the use of supplementary aids and services (Doc. c).
2. The IEP in effect in April 2011 also states that the student has behavioral needs that arise out of the disability related to maintaining attention to tasks, responding to redirection, following rules and routines, identifying her feelings, and maintaining appropriate physical contact with others (Doc. c).
3. In order to address the identified needs related to behavior, the IEP includes an annual goal to assist the student with improving her ability to engage appropriately with her peers, identify her feelings, communicate her needs, comply with rules, and follow routines. In order to assist the student with achieving the annual goal, the IEP requires that the student receive special education instruction and counseling as a related service in the kindergarten program in a special education early childhood program (Doc. c).

#### **April 27, 2011 IEP team meeting**

4. The IEP team convened on April 27, 2011 to review the student’s program. The documentation of the meeting indicates that the team considered information from the student’s teachers and service providers that the student’s behavior continues to interfere

with her learning, even in the kindergarten program in a special education early childhood program. The complainant indicated that she believed that the student requires adult assistance to work with her on a one-to-one basis (Doc. e).

5. Based on the reports of the student's progress, the team recommended that a psychological assessment and a Functional Behavioral Assessment (FBA) be conducted and the complainant provided consent (Docs. e and f).

June 9, 2011 IEP team meeting

6. The IEP team reconvened on June 9, 2011 and considered the results of the psychological assessment indicating that the student "often appears out of touch with reality, shows feelings that do not fit the situation and makes statements that make no sense." The report indicates that the student is displaying increased aggression that may be caused by her difficulty with social skills and communication (Doc. h).
7. The team also considered the results of the FBA indicating that the student's behaviors do not appear to occur in a pattern and are often triggered when she is unsupervised or engaging in social situations with peers. The FBA also indicates that the behaviors occur across all settings (Doc. i).
8. Based on this information, the team determined that the student meets the criteria for identification as a student with an emotional disability. The team revised the behavior goal consistent with reports of the student's performance and developed a goal for the student to improve her social skills. The team increased the amount of counseling services to be provided and determined that the student requires additional supports, including a one-to-one aide, use of positive reinforcers, use of manipulatives or sensory activities to promote focusing, and psychological consultation services to devise and implement behavior-tracking techniques (Doc. h).
9. The team determined that the student did not require the services of a Behavioral Intervention Plan (BIP) because the student's behaviors could be addressed through the positive behavioral interventions in the IEP (Doc. h).
10. The team also determined that the student continues to require special education instruction and related services in a separate special education classroom. The team determined that the student would attend first (1<sup>st</sup>) grade at XXXXXXXXXXXXXXX, the school she would otherwise attend if she were not disabled (Doc. h).
11. There is documentation that the student was provided with special education instruction in the kindergarten program in an early childhood special education setting between April 2011 and the end of the 2010-2011 school year (Docs. d and g).
12. While participating in the kindergarten program in a special education early childhood program, the student worked on sorting and classifying items into categories, identifying

items that do not belong in a group, naming theme-related vocabulary independently, following one-step directions, identifying letters of the alphabet, reciting the alphabet, understanding basic concepts such as direction, location, and quantity, counting, and naming the days of the week and the months of the year. The documentation indicates that the student worked on these skills given the accommodations and other supports listed in the IEP and with prompting and cues from the service provider. The documentation also indicates that the student was successful in demonstrating these skills between twenty-five (25) and seventy (70) percent of the time (Docs. d and g).

**Discussion/Conclusions:**

Allegation #1:                      IEP Development

Based on the Findings of Facts #1-#10, the MSDE finds that the IEP team considered the strengths of the student, the concerns of the complainant, the results of the most recent evaluation, and the academic, developmental, and functional needs of the student and that the IEP developed as a result of this consideration is consistent with the data considered. Therefore, the MSDE finds no violation regarding this allegation for this time period.

Allegation #2:                      Provision of Special Education Instruction

Based on the Findings of Facts #11 and #12, the MSDE finds that there is documentation that the student was provided with special education instruction consistent with her instructional level as determined by the data. Therefore, the MSDE finds no violation regarding this allegation for this time period.

**Start of the 2011-2012 School Year – October 6, 2011**

**Findings of Facts:**

13. From the start of the 2011-2012 school year until October 6, 2011, the student was provided with special education instruction in a general education classroom rather than a separate special education classroom as required by the IEP. However, on February 13, 2012, at a subsequent IEP team meeting, the team discussed this matter and determined that *compensatory services*<sup>3</sup> would be provided to the student to redress the violation (Docs. a and w).
14. During this time period, the student worked on recognizing, identifying, and producing letters of the alphabet, sorting items into categories, counting, understanding basic concepts such as “more” and “less,” tracing her name, sounding out letters, and identifying colors. The documentation indicates that the student worked on these skills

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

given the accommodations and other supports listed in the IEP and with prompting and cues from the service provider (Docs. l and cc).

**Discussion/Conclusions:**

Allegation #1:                      IEP Development

As stated above, the IEP team followed proper procedures when reviewing and revising the IEP in effect between April 2011 and the start of the 2011-2012 school year. Based on the Findings of Facts #6 and #15, below, the MSDE finds that there is no documentation that the IEP team convened between the start of the 2011-2012 school year and October 6, 2011. Therefore, the MSDE finds no violation regarding this allegation for this time period.

Allegation #2:                      Provision of Special Education Instruction

Based on the Finding of Fact #14, the MSDE finds that there is documentation that the student was provided with special education instruction consistent with her instructional level as determined by the data. Therefore, the MSDE finds no violation regarding this allegation for this time period.

However, based on the Finding of Fact #13, the MSDE finds that the services were not provided to the student in the educational placement required by the IEP during this time period. Therefore, the MSDE finds a violation occurred from the start of the 2011-2012 school year until October 6, 2011.

Notwithstanding this finding of a violation, the MSDE finds that the BCPS has offered and is providing the student with *compensatory services*<sup>3</sup> to redress the violation. Therefore, no additional student-specific corrective action will be required.

**October 6, 2011 – December 7, 2011**

**Findings of Facts:**

October 6, 2011 IEP team meeting

15. On October 6, 2011, the IEP team convened at the request of the complainant, who expressed her concern that the student was receiving special education instruction in the general education class and that she was not making progress in that setting. The team considered a report from the student's teacher stating that the student is reluctant to receive instruction, rarely puts forth effort, does not complete assignments, is usually very distracted and not able to focus on her work, is often uncooperative and refuses to follow directions, and is very disruptive to other students in the room (Docs. k and m).
16. Despite information from the student's teacher and the complainant's concerns, the team revised the IEP to reflect that the student would continue to receive special education



instruction in a general education classroom because the school did not have a separate special education classroom at that time. The team determined that it would “monitor” the student’s behavior with the provision of the one-to-one aide but there is no documentation that the team considered whether additional supports could be provided to the student in the general education setting (Doc. m and interview with school staff).

December 7, 2011 IEP team meeting

17. On December 7, 2011, the IEP team convened again to conduct a reevaluation of the student. The team considered reports from the student’s teachers and service providers that the student refuses to complete assignments, becomes frustrated when she does not understand directions, becomes aggressive when asked to follow directions, is defiant, is easily distracted and cannot remain focused even for a short period of time, and even with modified assignments, “has not grasped any concepts” (Doc. o).
18. The team also considered the concerns of the complainant that the student has not made any progress in school. The complainant once again requested that the student be placed in an environment where she would receive more support (Doc. o).
19. Based on this information, the team recommended conducting an educational assessment, a speech-language assessment, a psychological assessment to include cognitive functioning and social/emotional/behavioral development, a classroom observation, and an FBA. The complaint provided consent for the assessments (Docs. o and p).
20. The team also determined that the IEP could not be implemented in the general education classroom even with the provision of supplementary aids and services and that the LRE in which the IEP can be implemented is a separate special education classroom. There is documentation that a separate special education classroom with the student was created in order to implement the IEP. There is documentation that six (6) other students were in the class (Docs. o, cc, and interview with school staff).
21. There is documentation that the student was provided with special education instruction in the general education classroom from October 6, 2011 to December 7, 2011, consistent with the IEP (Docs. m, n, and cc).
22. During this period of time, the student worked on recognizing, identifying, and producing letters of the alphabet, sorting items into categories, counting, understanding basic concepts such as “more” and “less,” tracing her name, sounding out letters, and identifying colors. The documentation indicates that the student worked on these skills given the accommodations and other supports listed in the IEP and with prompting and cues from the service provider (Docs. n, cc, and dd).

**Discussion/Conclusions:**

Allegation #1:                      IEP Development

Based on the Findings of Facts #16 and #20, the MSDE finds that from October 6, 2011 to December 7, 2011, the student's educational placement was based upon the school's available class structure and not based on the student's individual needs. Further, based on the Findings of Facts #15 and #16, the MSDE finds that there is no documentation that the IEP team considered additional supports that could be provided in order to implement the IEP in the general education classroom. Therefore, the MSDE finds that the IEP in effect between October 6, 2011 and December 7, 2011 was not consistent with the data. As a result, the MSDE finds that a violation occurred regarding this allegation during this time period.

Allegation #2:                      Provision of Special Education Instruction

Based on the Findings of Facts #21 and #22, the MSDE finds that there is documentation that the student was provided with special education instruction consistent with her instructional level as determined by the data. Therefore, the MSDE finds no violation regarding this allegation for this time period.

**December 7, 2011 – March 13, 2012**

**Findings of Facts:**

February 13, 2012 IEP team meeting

23. The team convened on February 13, 2012 to consider the results of assessments that were recommended on December 7, 2011 as part of a reevaluation. At the meeting, the team considered information from the complainant that since the last meeting, the student had been hospitalized between January 8 and 18, 2012 for psychiatric treatment. The hospital discharge summary that the complainant provided indicates that the student has a cognitive disability and a language disorder and recommends that the student be placed in a "level 5 school" (Doc. r).
24. The team considered the results of a classroom observation, indicating that the student struggles with writing and that she "drifted off task" whenever the one-to-one aide did not pay direct attention to her. The observer noted that during a task that required cutting, the student "appeared to forget" how to hold the scissors once she put them down (Doc. s).
25. The team considered the results of the psychological assessment, indicating that the student engages in a significant number of behaviors that interfere with learning. These include hyperactivity, aggression, disruption, arguing, impulsivity, failing to follow directions and rules, and difficulty maintaining attention for extended periods of time. The report indicates that the student has difficulty establishing friendships, working

- independently, managing emotions, and attending to person grooming needs. The report also indicates that the student demonstrates “significant deficits across all skill areas” in adaptive skills. These deficits include the skills needed to communicate, interact, and play appropriately with peers, skills needed for independence, responsibility, and self-control, and skills needed for taking care of basic dressing, toileting, and grooming needs (Doc. t).
26. The psychological assessment report indicates that one of the contributing factors to the student’s behavioral needs is a “significant level of anxiety.” The report clarifies that, at school, behaviors indicative of anxiety are noted when teachers have attempted to remove the student from familiar and comfortable settings and when she is asked to complete school work that she does not understand or is too difficult for her. The report notes that the student’s emotional difficulties will continue to impact her ability to function in the classroom (Doc. t).
  27. The psychological assessment report includes recommendations for placing the student in an environment in which she feels very comfortable and in which “perceived threats” are minimized, preparing the student for transitions, providing the student with tasks at her developmental level, teaching the student to identify situations which have the potential to create anxiety and interventions to manage or reduce anxiety, minimizing writing requirements, and providing frequent breaks (Doc. t).
  28. The team considered the results of the educational assessment, indicating that the student is functioning at a “four-year-old” level in all areas of academics, is very distracted in class, completes very little work independently, and has difficulty completing work even with direct assistance from the one-to-one aide or the classroom teacher (Doc. q).
  29. The team considered the FBA, indicating that the student’s targeted behaviors are inappropriate interactions with peers and adults and noncompliance. The FBA indicates that the student’s behaviors are more likely to occur in a large group setting or during transitions and when she is given a direction that she does not want to follow. The FBA indicates that while the student enjoys earning rewards and verbal praise, they do not act as a deterrent to the targeted behaviors. Therefore, the FBA identifies other strategies to assist the student with improving her behavior, including the provision of alternative activities for a specified amount of time prior to completing assignments (Doc. v).
  30. Based on the information, the team revised the IEP to include a goal for the student to utilize anxiety management strategies in order to complete tasks. The team also determined that the student requires additional supports, including extended time, frequent breaks, preferential seating, altered or modified assignments, and use of a “support room” so that she may “deescalate and calm down” when other, less intrusive measures have been attempted (Doc. w).
  31. A BIP was developed requiring the use of strategies including opportunities to make choices during instruction, predictable daily routines, verbal reminders of transitions, and

access to sensory stimulus. It also requires that the student be provided with instruction to develop replacement behaviors through modeling and role play and to learn to request alternate activities for a specified amount of time before returning to classroom activity when needed to reduce anxiety (Doc. x).

32. The team also determined that the LRE in which the IEP can be implemented continues to be a separate special education classroom with the provision of additional supports, including access to crisis intervention, an on-site behavior specialist, and the use of a “support room.” The team determined that these supports were not available at XXXXXXXXXXXXX and therefore, the student would be placed in another school. The documentation indicates that the complainant requested the opportunity to visit the schools that had such supports and determine which one would be the best for the student; the team agreed (Doc. w).
33. On March 13, 2012, the complainant withdrew the student from XXXXXXXXXXXXX. On March 14, 2012, the complainant enrolled the student at XXXXXXXXXXXXX, a school that has the additional supports determined necessary by the IEP team (Docs. y and ee).
34. There is documentation that between December 7, 2011 and March 13, 2012, the student received special education instruction in a separate special education classroom, as required by the IEP (Docs. u and cc).
35. During this period of time, the student worked on recognizing, identifying, and producing letters of the alphabet, sorting items into categories, counting, understanding basic concepts such as “more” and “less,” tracing her name, sounding out letters, and identifying colors. The documentation indicates that the student worked on these skills given the accommodations and other supports listed in the IEP and with prompting and cues from the service provider (Docs. u, cc, and dd).

**Discussion/Conclusion:**

Allegation #1:                      IEP Development

Based on the Findings of Facts #17-#20, the MSDE finds that at the December 7, 2011 IEP team meeting, the team considered the student’s progress and determined that additional data was needed in order to ensure that the student’s educational needs were identified and addressed.

Based on the Findings of Facts #23-#33, the MSDE finds that at the February 13, 2012 IEP team meeting, the team considered the strengths of the student, the concerns of the complainant, the results of the most recent evaluation, and the academic, developmental, and functional needs of the student and revised the IEP consistent with the data. Therefore, the MSDE finds no violation regarding this allegation for this time period.

Allegations #2 and #3:            Provision of Special Education Instruction and Implementation in the Educational Placement Required by the IEP

Based on the Findings of Facts #34 and #35, the MSDE finds that there is documentation that the student was provided with special education instruction consistent with her instructional level as determined by the data.

In this case, the complainant alleges that the IEP requires the provision of special education instruction in a “highly structured” therapeutic setting but that this is not being provided because the student has been involved in altercations with other students, has been threatened by a classmate, and that the student’s teachers are unable to control the classroom (Doc. a and interview with the complainant).

Based on the Finding of Fact #34, the MSDE finds that the student was placed in a setting with the supports required by the IEP. Therefore, the MSDE finds no violation regarding these allegations for this time period.

**March 13, 2012 - Present**

**Findings of Facts:**

March 28, 2012 IEP team meeting

36. The IEP team convened on March 28, 2012 to consider the complainant’s request to change the student’s educational placement. The team considered information regarding several behavioral incidents that had occurred in the separate special education classroom and the report of the complainant that the student arrives home from school crying and does not want to attend school. The team also considered information from the student’s private service providers that she requires a more restrictive placement that includes:

an in-school crisis intervention team, behavior management program with clear academic and behavioral expectations, concrete reinforcers and consequences, a behavioral aide, highly structured self-contained classroom with low student to teacher ratio, and an educational environment with limited stimulation (Doc. z).

37. Based on the review and in order to address the complainant’s concerns, the team determined the student would receive the special education instruction in a program designed to address the needs of students with emotional disabilities in a separate special education classroom available at XXXXXXXXXXXXXXX (Doc. z).

May 3, 2012 IEP team meeting

38. The team convened again on May 3, 2012, to review the complainant’s request to change the student’s educational placement. The team considered information from the

complainant that the student was again hospitalized for psychiatric treatment between April 9 and 24, 2012. The team also considered reports from the hospital staff containing recommendations that the student requires “a highly structured therapeutic environment that offers small classes, individualized instruction, crisis intervention, a “time-out” area, a behavior management plan, individual and group therapy, medication management by a psychiatrist, and an integrated treatment team approach.” The information stated that these requirements could best be met in a “private separate special education school” (Docs. aa and bb).

39. The team determined that, with the exception of medication management by a psychiatrist, all of the recommendations could be implemented in the program designed to address the needs of students with emotional disabilities in a separate special education classroom at XXXXXXXXXXXXXXX. The team also determined that a nursing plan would be developed that for school staff to communicate with the student’s private physician about the student’s progress and for medication to be administered in school as directed by the physician (Doc. bb).
40. There is documentation that between March 14, 2012, when the student transferred to XXXXXXXXXXXXXXX and March 28, 2012, the student received special education instruction in a separate special education classroom consistent with the IEP (Docs. a and y).
41. An on-site review of work samples indicates that, between March 14 and 28, 2012, the student continued to work on recognizing, identifying, and producing letters of the alphabet, sorting items into categories, counting, understanding basic concepts such as “more” and “less,” tracing her name, and identifying colors (on-site review of work samples).
42. There is documentation that the complainant did not send the student to school after her release from the hospital on April 24, 2012 until May 7, 2012. Since the student returned to school, she has been receiving special education instruction in the program designed to address the needs of students with emotional disabilities in a separate special education classroom at XXXXXXXXXXXXXXX (Doc. ee and interviews with the complainant and school staff).

**Discussion/Conclusion:**

Allegation #1:                      IEP Development

Based on the Findings of Facts #36-#39, the MSDE finds that since the student’s transfer to XXXXXXXXXXXXXXX, the IEP team has met on two (2) occasions to consider information from the complainant, the student’s teachers and service providers, and the student’s private physicians and service providers and, based on that data, has revised the student’s program consistent with that data. Therefore, the MSDE finds no violation regarding this allegation since March 14, 2012.

Allegations #2 and #3:            Provision of Special Education Instruction and Implementation in the Educational Placement Required by the IEP

Based on the Findings of Facts #40 and #41, the MSDE finds that the student was provided with special education instruction consistent with her instructional level as determined by the data between March 14 and 28, 2012. Based on the Finding of Fact #42, the MSDE finds the student has been receiving special education instruction in a “highly structured” setting since her return to school on May 7, 2012. Therefore, the MSDE finds no violation regarding this allegation.

**CORRECTIVE ACTIONS/TIMELINES:**

**Student-specific**

The MSDE requires the BCPS to provide documentation by the start of the 2012-2013 school year, that the IEP team has convened and determined the amount and nature of *compensatory services*<sup>4</sup> necessary to remediate for the violation related to development of the IEP in effect from October 6, 2011 to December 7, 2011.

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

**Similarly-situated students at XXXXXXXXXXXXXXXX**

The MSDE requires the BCPS to provide documentation by November 15, 2012, that it has identified all students at XXXXXXXXXXXXXXXX who have not received special education instruction and related services in the educational placement required by the IEP and has offered a remedy for the loss of services for each student identified.

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 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

XXX  
Dr. Kim Hoffmann  
June 1, 2012  
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Letter of Findings. If additional information is provided, it will be reviewed and the MSDE will determine if a reconsideration of the conclusions is necessary. Upon consideration of this additional documentation, this office may leave its findings and conclusions intact, set forth additional findings and conclusions, or enter new findings and conclusions. Pending the decision on a request for reconsideration, the school system must implement any corrective actions consistent with the timeline requirements as reported in this Letter of Findings.

Questions regarding the findings, conclusions and corrective actions contained in this letter should be addressed to this office in writing. The complainant and the school system maintain the right to request mediation or to file a due process complaint, if they disagree with the identification, evaluation, placement, or provision of a Free Appropriate Public Education (FAPE) for the student, including issues subject to a State complaint investigation, consistent with the IDEA. The MSDE recommends that this Letter of Findings be included with any request for mediation or due process.

Sincerely,

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

MEF:ks

cc : Andrés Alonso  
Nancy Ruley  
XXXXXXXXXXXXX  
XXXXXXXXXXXXXXXXXXXXX  
XXXXXXXXXX  
Martha J. Arthur  
Kathy Stump