



August 6, 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: #12-098

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 June 7, 2012, the MSDE received a complaint from Ms. XXXXXXXXXXXXX, hereafter, “the complainant,” on behalf of her son. 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 did not follow proper procedures when reviewing and revising, as appropriate, the student’s Individualized Education Program (IEP) during the 2011-2012 school year, in accordance with 34 CFR §§300.320, .323, and .324 and COMAR 13A.05.01.10. Specifically:
 - a. The IEP does not include present levels of academic achievement and functional performance in order to properly identify and address all of the needs that arise from the student’s disability.
 - b. The IEP does not address the student’s social/emotional/behavioral and speech-language needs.

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- c. The IEP does not contain a clear statement of the frequency, location, and duration of the supplementary aids and services, program modifications, and supports to be provided to the student.
 - d. The IEP team did not consider the potential harmful effects of transporting the student to his current placement, including the amount of time and distance involved in traveling to and from school.
 - e. The transition plan included in the January 31, 2012 IEP¹ was not developed by the IEP team.
 - f. The IEP team did not consider the results of Independent Educational Evaluations (IEE) that the complainant provided in February 2012 and April 2012.
2. The BCPS did not provide the complainant with periodic reports of the student's progress toward achieving the annual IEP goals to improve behavior and speech-language skills during the 2011-2012 school year, in accordance with 34 CFR §300.320.
 3. The BCPS did not ensure that the student was provided with the psychological and transportation services in the manner required by the IEP during the 2011-2012 school year, in accordance with 34 CFR §300.101.
 4. The BCPS did not ensure that the IEP team meetings convened on January 31, 2012 and May 21, 2012 included the required participants, in accordance with 34 CFR §300.321.
 5. The BCPS has not ensured that reports of assessments conducted in 2008 have been maintained in the student's educational record in accordance with COMAR 13A.08.02.28 and the *Maryland Student Records System Manual*.

INVESTIGATIVE PROCEDURES:

1. Ms. Kathy Stump, Education Program Specialist, MSDE, was assigned to investigate the complaint.
2. On June 12, 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 June 15, 2012, Ms. Stump conducted a telephone interview with the complainant and clarified the allegations to be investigated.

¹ The allegation originally identified by this office did not include a date. However, during the course of the investigation, it was determined that the transition plan for this student, who turns fourteen (14) in December 2012, was developed at the January 31, 2012 IEP team meeting.

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4. On June 19, 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 June 28, 2012, Ms. Stump and Ms. Tyra Williams, Education Program Specialist, MSDE, conducted an interview with Mr. XXXXXXXXXX, IEP Team Chairperson, XXXXXXXXXXXXXXXXXXXX and Dr. Diane McKelvey, Educational Specialist, BCPS. 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 June 29, 2012, Ms. Stump reviewed the student's educational record at the BCPS Central Office.
7. On July 11, 13, 23, and 24, 2012, the BCPS provided the MSDE with additional documentation related to the allegations in the complaint, via electronic mail (e-mail).
8. 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 June 7, 2012;
 - b. Behavioral Intervention Plan, dated June 4, 2009;
 - c. BCPS Special Education Progress Report form for math, dated April 2011;
 - d. BCPS Speech/Language Progress Report form, dated April 26, 2011;
 - e. BCPS Special Education Progress Report form for Social Studies, dated April 29, 2011;
 - f. IEP, dated May 3, 2011;
 - g. BCPS Progress Report form for Language Arts, dated December 14, 2011;
 - h. BCPS Progress Report form for Language Arts, dated January 30, 2012;
 - i. XXXXXXXXXXXXXXXXXXXX Speech-Language Evaluation report, dated January 27, 2012;
 - j. IEP team meeting invitation for the January 31, 2012 IEP team meeting;
 - k. Receipt of Parental Rights Documents form, dated January 31, 2012;
 - l. IEP team meeting sign-in sheet, dated January 31, 2012;
 - m. IEP, dated January 31, 2012;
 - n. XX report, dated April 2, 2012;
 - o. BCPS Progress Report form for Language Arts, dated April 11, 2012;
 - p. BCPS Speech/Language Progress Report form, dated May 16, 2012;
 - q. BCPS Psychological Services Progress Report form, dated May 18, 2012;
 - r. BCPS Progress Report form for Math, dated May 21, 2012;
 - s. Receipt of Parental Rights Document form, dated May 21, 2012;
 - t. IEP team meeting sign-in sheet, dated May 21, 2012;
 - u. IEP, dated May 21, 2012;
 - v. BCPS Notice and Consent for Assessment form, dated May 21, 2012;

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- w. IEP progress reports for the 2011-2012 school year;
- x. Communication log for the 2011-2012 school year;
- y. School Psychologist's service provider log for the 2011-2012 school year;
- z. BCPS Department of Transportation Student Attendance roster for the 2011-2012 school year;
- aa. BCPS Instructional Day Bell Schedule for School Year 2011-2012;
- bb. Student's class schedule for the 2011-2012 school year; and
- cc. BCPS *IEP Team Associate* job description.

BACKGROUND:

The student is thirteen (13) years old, is identified as a student with autism under the IDEA, and receives special education instruction and related services. During the 2011-2012 school year, he attended XXXXXXXXXXXXXXXX (XXXXXXX). His placement as a ninth (9th) grade student for the 2012-2013 school year will be determined at an IEP team meeting to be held prior to the start of the school year after results of assessments are reviewed by the team and the IEP is revised, as appropriate.

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, f, k, m, s, u, and v).

ALLEGATION #1: IEP DEVELOPMENT, REVIEW, AND REVISION

Findings of Facts:

May 3, 2011 IEP Team Meeting

Present Levels of Academic Achievement and Functional Performance

1. The IEP in effect at the start of the 2011-2012 school year includes annual goals in each academic area impacted by the student's disability, including reading, written language, and math (Doc. f).
2. Each annual goal is designed to assist the student with improving specific skills. However, the statements of the student's present levels of academic achievement and functional performance do not identify the skills that are areas of weakness for the student (Docs. c, e, and f).
3. The IEP in effect at the start of the 2011-2012 school year includes an annual goal for the student to improve specific articulation skills that are identified as areas of weakness in the statement of the student's present level of academic achievement and functional performance (Docs. d and f).
4. The IEP in effect at the start of the 2011-2012 school year includes an annual goal for the student to improve the social interaction skills that are identified as areas of weakness in

the statement of the student's present level of academic achievement and functional performance (Doc. f).

Addressing the Student's Social/Emotional/Behavioral and Speech-Language Needs and Statement of Services

5. The IEP includes a statement of the special education and related services to be provided to the student in order to assist him in achieving the annual goals, including special education instruction, psychological services, and speech-language therapy as a related service. The IEP requires that the student receive one (1) thirty (30) minute session of counseling per week and two (2) thirty (30) minute sessions of speech-language therapy per week (Doc. f).
6. The IEP includes the anticipated frequency, location, and duration of those services. It indicates that the special education instruction for all academic areas is to be provided in a separate special education classroom but that the special education instruction provided in two (2) of the academic subjects will be in a separate special education classroom that has additional supports for students who demonstrate autistic-like behaviors (Doc. f).
7. The IEP also contains positive behavioral interventions designed to assist the student in achieving the annual goal related to improving his social skills. These interventions include using positive reinforcement and rewards, such as computer time and the chance to be the teacher's "special helper," and teaching the student specific social skills, such as building and maintaining friendships, sharing, taking turns, and anger management techniques (Docs. b and f).
8. The IEP also includes a statement of the supplementary aids, services, program modifications, and supports to be provided to the student. The IEP includes the anticipated frequency, location, and duration of those services and modifications (Doc. f).

Transportation

9. The IEP reflects that the team determined that the student's IEP cannot be implemented in the school he would otherwise attend if not disabled, and that the student will be provided with transportation to and from school on a daily basis. While the distance between the student's home and his assigned school is three and one-half (3½) miles, the documentation indicates that the student rides the bus for as long as one (1) hour and forty-six (46) minutes in the morning and as long as one (1) hour and twenty-one (21) minutes in the afternoon (Docs. f, z, and aa).
10. School staff acknowledged that the complainant informed them of her concern about the length of the bus ride. However, there is no documentation that the IEP team was convened to consider this information (Docs. f, m, u, and interview with school staff).

January 31, 2012 IEP Team Meeting

Present Levels of Academic Achievement and Functional Performance

11. On January 31, 2012, the IEP team convened to review the student's program and progress. The documentation of the meeting indicates that the team considered progress reports on the reading and written language goals. The reports describe the specific skills in which the student demonstrates weaknesses consistent with the skills that the goals are designed to address. However, the statement of the student's present level of academic achievement and functional performance was not revised to indicate the specific skills that were identified as areas of weakness for the student (Docs. g, h, j, and m).

Transition Plan

12. The meeting invitation for the January 31, 2012 IEP team meeting documents that one of the purposes of the meeting was to consider post-secondary goals and transition services and that the student was invited to attend the meeting. The IEP team meeting sign-in sheet indicates that the student attended the meeting (Docs. j and l).
13. The IEP, dated January 31, 2012, includes post-secondary goals based on a student interview related to training, education, and employment. The IEP also includes the transition services, including course of study, needed to assist the student in achieving those goals (Doc. m).

May 21, 2012 IEP Team Meeting

Present Levels of Academic Achievement and Functional Performance and Addressing Social/Emotional/Behavioral and Speech-Language Needs

14. On May 21, 2012, the IEP team convened to review the student's program and progress. The documentation of the meeting indicates that the team revised the annual goals related to academics based on reports of the student's progress. The statements of the student's present levels of academic achievement and functional performance related to academics were not revised to indicate the specific skills that were identified as areas of weakness for the student (Docs. o-r, u, and w).
15. The team also considered progress reports on the goal related to social skills that identifies new skills in which the student demonstrates weakness, including communicating thoughts and feelings appropriately and developing empathy. However, the goal was not revised to indicate that these skills will be addressed with the provision of special education instruction and related services (Docs. q and u).
16. The team also considered the complainant's concerns that the student's speech intelligibility has regressed and her belief that the student requires one (1) hour daily of speech-language services. The documentation of the meeting indicates that, in response, the team reviewed the speech-language pathologist's report of the student's progress

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toward achieving the annual goal related to articulation. That report indicates that the student has demonstrated improvement with his speech skills, but that he still requires verbal prompting in order to consistently utilize those skills (Docs. p and u).

Considering the Results of Independent Educational Evaluations

17. The team also reviewed the results of a private speech-language assessment, which indicates that the student has an articulation disorder and includes a recommendation that the student receive speech-language therapy services once per week to address articulation needs. The report does not indicate that the student skills have regressed (Docs. i and u).
18. Additionally, the team reviewed the results of a private neuropsychological assessment obtained by the complainant. The documentation reflects that the private evaluator who conducted the assessment participated in the IEP team meeting and presented the results of the assessment to the team (Docs. n and u).
19. The documentation indicates that the team incorporated some of the recommendations from the private assessments into the revised IEP and there is no documentation that questions were raised about the private assessments that could not be addressed by members of the team who participated in the meeting (Docs. i, n, and u).

Discussion/Conclusions:

Allegation #1a: Statement of the Student's Present Levels of Achievement and Functional Performance in Academic Areas

In order to provide a Free Appropriate Public Education (FAPE) to a student with a disability, the public agency must ensure that an IEP team develops an IEP that includes a statement of the student's present levels of academic achievement and functional performance. This includes information about how the student's disability affects the student's involvement and progress in the general curriculum. Based on that information, the team must develop annual measurable goals designed to meet the needs that result from the disability to enable the student to be involved in and make progress in the general education curriculum and to meet any other educational needs that result from the student's disability (34 CFR §§300.320 and .324, and *Analysis of Comments and Changes to the IDEA*, Federal Register, Vol. 71, No. 156, p. 46662, August 14, 2006).

The IEP must also include a statement of the special education instruction and related services to be provided to assist the student in achieving the annual goals, a description of how the student's progress toward achieving those goals will be measured and when that progress will be reported to the student's parents. Therefore, in order to ensure that the IEP is designed to provide the student with the special education instruction and related services needed to enable the student to be involved in and make progress in the general education curriculum, the annual IEP goals must be aligned with the student's present levels of performance (34 CFR §§300.320 and .324, and

Analysis of Comments and Changes to the IDEA, Federal Register, Vol. 71, No. 156, p. 46662, August 14, 2006).

In this case, the complainant alleges that the statement of the student's present levels of performance does not include sufficient information to determine whether the annual IEP goals address the needs that arise out of the student's disability (Doc. a and interview with the complainant).

Based on the Findings of Facts #1, #2, #11, and #14, the MSDE finds that the statements of the student's present levels of academic achievement and functional performance related to academics do not identify the skills in which the student demonstrates weakness. As a result, the MSDE finds that there is no documentation that the annual IEP goals are aligned with the statements of the student's present levels of academic achievement and functional performance in order to ensure that the program addresses the student's identified academic needs. Therefore, the MSDE finds a violation with respect to this aspect of the allegation.

Allegation #1b: IEP that Addresses the Student's Social/Emotional/Behavioral and Speech-Language Needs

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).

Speech-Language Needs

In this case, the complainant alleges that the BCPS speech-language pathologist expressed concerns about the student's speech intelligibility, in that the student's speech had "deteriorated," but recommended a reduction in services. Additionally, the complainant alleges that there has been a "dramatic regression" in the student's speech as demonstrated in the private evaluation (Doc. a and interview with the complainant).

Based on the Findings of Facts #16 and #17, the MSDE finds that there is no documentation that the student's speech skills have regressed. Based on the Findings of Facts #3, #5, #8, #16, #17, and #19, the MSDE further finds that the IEP in effect since the start of the 2011-2012 school year contains present levels of functional performance in the area of speech articulation that identifies specific skills in which the student demonstrates weaknesses, annual goals for the student to improve these skills, and services to assist him in achieving the goals, consistent with the data, including the private assessment obtained by the complainant. Therefore, the MSDE finds no violation regarding this aspect of the allegation.

Social/Emotional/Behavioral Needs

Based on the Findings of Facts #4, #5, #7, and #8, the MSDE finds that the IEP in effect at the start of the 2011-2012 school year includes present levels of functional performance in the area of social skills that identifies specific skills in which the student demonstrates weaknesses, annual goals for the student to improve these skills, and services to assist him in achieving the goals.

However, based on the Finding of Fact #15, the MSDE finds that, since May 21, 2012, specific social-emotional skills have been identified as areas in which the student demonstrates weakness that are not addressed in the annual goals. Therefore, the MSDE finds a violation regarding this aspect of the allegation since May 21, 2012.

Allegation #1c: Statement of Special Education and Related Services

Each student's IEP must contain a statement of the special education and related services and supplementary aids and services to be provided to the student. The IEP must include a statement of the projected date for the beginning of the services and modifications and the anticipated frequency, location, and duration of those services and modifications (34 CFR §300.320).

Based on the Findings of Facts #5-#8, the MSDE finds that the IEP in effect during the 2011-2012 school year contains the required information regarding the special education services to be provided to the student. Therefore, the MSDE finds no violation regarding this aspect of the allegation.

Allegation #1d: Considering the Potential Harmful Effects of the Student's Educational Placement and Addressing the Student's Transportation Needs

If the IEP team determines a student with a disability cannot be educated in the school the student would attend if not disabled, the IEP team must consider any potential harmful effect on the student or the quality of services, including consideration of the specialized transportation needs of the student (34 CFR §300.116 and COMAR 13A.05.01.10C(1)(e)). The consideration of the specialized transportation needs of the student requires a consideration of the effect transportation may have on the student in relation to the student's age, disability, specialized equipment, personnel needed to assist the student during transportation, the amount of time involved in transporting the student, and the distance the student will be transported (COMAR 13A.05.01.10C(1)(e)).

As stated above, when developing the IEP, the IEP team must consider, among other things, the concerns of the parents for enhancing the education of the student (34 CFR §300.324).

Based on the Finding of Fact #9 and #10, the MSDE finds that although the IEP team determined that the IEP cannot be implemented in the school the student would otherwise attend if he were not disabled, and school staff were notified by the complainant of the length of time involved in

transporting the student, there is no documentation that the team convened to consider that information. Therefore, the MSDE finds a violation regarding this allegation.

Allegation #1e: Transition Plan

Beginning not later than the first IEP to be in effect when a student turns fourteen (14) years old, the IEP must include appropriate measurable post-secondary goals based on age-appropriate transition assessments related to training, education, employment, and independent living, as appropriate. When the purpose of an IEP team meeting is to consider the transition plan, the public agency must ensure that the student is invited to the IEP team meeting and, if the student is unable to attend the meeting, that the public agency takes steps to ensure that the student's preferences and interests are considered (34 CFR §300.321 and COMAR 13A.05.01.07).

In this case, the complainant alleges that the proper procedures were not followed to obtain information for the development of the transition plan because school staff contacted her to discuss the student's preferences and interests after the January 31, 2012 IEP team meeting, when the transition plan was supposed to have been developed. The complainant further alleges that the questions were not posed during the meeting (Doc. a and interview with the complainant).

Based on the Findings of Facts #12 and #13, the MSDE finds that there is documentation that the student participated in the January 31, 2012 IEP team meeting and that the transition plan was developed at that meeting based on his input. Therefore, the MSDE finds no violation regarding the transition plan developed at the January 31, 2012 meeting.

If the complainant believes that the documentation in the student's educational record, which was used as a basis for this conclusion, is inaccurate or misleading, she may request an amendment of the record (34 CFR §300.618). If the public agency refuses to amend the information in accordance with the request, it must inform the student's parent of the refusal. The public agency must also advise the parent of the right, upon the request of the parent, to a hearing conducted by the public agency to challenge the information in the student's education record to ensure that it is not inaccurate or misleading (34 CFR §300.619).

If, as the result of the hearing, the public agency decides that the information is inaccurate or misleading, it must amend the information and inform the student's parent in writing. If, however, the public agency decides that the information is not inaccurate or misleading, it must inform the parent of the parent's right to place in the record a statement regarding information in the record or to set forth any reasons for disagreeing with the decision of the agency (34 CFR §300.620).

Allegation #1f: Considering the Results of Independent Educational Evaluations

When a parent of a student with a disability obtains an Independent Educational Evaluation (IEE) at public expense or shares with the public agency an evaluation obtained at private expense, the results of the evaluation must be considered by the public agency, if it meets agency

criteria, in any decision made with respect to the provision of a FAPE to the student (34 CFR § 300.502).

Based on the Findings of Facts #17-#19, the MSDE finds that there is documentation that the results of the private speech-language assessment and the private neuropsychological assessment were considered at the May 21, 2012 IEP team meeting and there is no documentation that questions were raised about the information in those reports that could not be addressed. Therefore, the MSDE finds no violation regarding this allegation.

ALLEGATION #2: **PROVISION OF REPORTS OF THE STUDENT'S
PROGRESS TOWARD ACHIEVING THE
ANNUAL IEP GOALS**

Findings of Facts:

20. The IEP in effect for the 2011-2012 school year states that the complainant will be informed in writing on a quarterly basis of the student's progress toward achieving the annual IEP goals (Docs. f, m, and u).
21. The student's educational record contains copies of IEP progress reports dated November 4, 2011, January 20, 2012, April 13, 2012, May 21, 2012, and June 11, 2012. There is documentation that the progress reports for November 2011 and January 2012 were provided to the complainant, but there is no documentation that she was provided with the remaining reports (Docs. w, x, and review of educational record).

Discussion/Conclusions:

The IEP must include, among other things, a description of how the student's progress toward achieving the annual goals will be measured and when reports will be made of the student's progress to the parent (34 CFR §300.320). The IDEA requires that the public agency ensure that all services described in the IEP are provided in accordance with the IEP (34 CFR §300.101).

Based on the Findings of Facts #20 and #21, the MSDE finds that quarterly progress reports were generated, but there is no documentation that the reports for April 2012, May 2012, and June 2012 were sent to the complainant, as required. Therefore, the MSDE finds a violation regarding this allegation from April 2012 until the end of the 2011-2012 school year.

ALLEGATION #3: **IEP IMPLEMENTATION**

Findings of Facts:

Psychological Services

22. The IEP in effect for the 2011-2012 school year requires that the student receive psychological services for thirty (30) minutes per week either "inside or outside of the

general education setting based on the professional recommendation” of the school psychologist (Docs. f, m, and u).

23. The school psychologist’s service provider log for the 2011-2012 school year indicates that the student received psychological services in the amount and frequency and in the settings required by the IEP during the 2011-2012 school year (Doc. y).

Transportation Services

24. The IEP in effect for the 2011-2012 school year requires that the student be provided with transportation to and from school (Docs. f, m, and u).
25. The transportation log for the 2011-2012 school year documents that the student was provided transportation as required by the IEP on a daily basis (Doc. z).

Discussion/Conclusions:

As stated above, the public agency is required to ensure that the student is provided with the special education and related services required by the IEP (34 CFR §300.101).

Psychological Services

Based on the Findings of Facts #22 and #23, the MSDE finds that the psychological services were provided as required by the IEP for the 2011-2012 school year. Therefore, the MSDE finds no violation regarding this aspect of the allegation.

Transportation Services

In this case, the complainant alleges that the student has not been consistently provided with the transportation services required by the IEP (Doc. a and interview with the complainant). Based on the Findings of Facts #24 and #25, the MSDE finds that the student was provided with transportation on a daily basis during the 2011-2012 school year, as required by the IEP. Therefore, the MSDE finds no violation regarding this aspect of the allegation.

ALLEGATION #4: IEP TEAM MEETING PARTICIPANTS

Findings of Facts:

January 31, 2012 Team Meeting

26. The IEP team meeting sign-in sheet indicates that the following people attended the meeting: the complainant, the complainant’s advocate, the student, the speech-language pathologist, a special education teacher of the student, a general education teacher of the

student, and the instructional associate,² who served as the public agency representative (Doc. l).

27. The IEP requires that the student receive instruction in academic subjects, including math and language arts, in a separate special education classroom from a special education teacher. There is no documentation that the complaint had questions about either of these academic subjects that could not be addressed at the meeting (Docs. f, m, and bb).

May 21, 2012 Team Meeting

28. The IEP team meeting sign-in sheet indicates that the following people attended the meeting: the complainant, the complainant's advocate, the psychologist who conducted the private neuropsychological assessment, a general education teacher, two (2) special education teachers, a special education paraprofessional, the speech-language pathologist, two (2) BCPS central office support personnel, the IEP team chairperson, and a school administrator (Doc. t).
29. There is documentation that, prior to the May 21, 2012 IEP team meeting, the BCPS school psychologist reviewed the private neuropsychological assessment and summarized its findings in the progress report (Doc. q).

Discussion/Conclusions:

The IEP team must include, among others, the student's parent, at least one (1) regular education teacher of the student, at least one (1) special education teacher of the student, a representative of the public agency, an individual who can interpret the instructional implication of evaluation results, and the student when appropriate (34 CFR §300.321).

The United States Department of Education, Office of Special Education Program (OSEP) has clarified that a public agency may determine which specific staff member will serve as the agency's representative in a particular IEP team meeting (*Analysis of Comments and Changes to the IDEA*, Federal Register, Vol. 71, No. 156, August 2006, p. 46670).

The OSEP has further clarified that decisions as to which particular teachers or special education providers are members of the IEP team are best left to local school officials to determine (*Analysis of Comments and Changes to the IDEA*, Federal Register, Vol. 71, No. 156, August 2006, p. 46670).

² In the BCPS, an "instructional associate," now titled "IEP Team Associate," performs administrative functions regarding an assigned special education caseload in a specific school. These functions include providing guidance and assistance to IEP teams and implementing BCPS policies and procedures related to IEP team meetings. The person serving in this position is sometimes appointed by the BCPS to serve as a representative of the school system on IEP teams (Doc. cc and interview with BCPS personnel)

January 31, 2012 Team Meeting

In this case, the complainant alleges that the IEP team meeting did not include the required participants because the instructional associate acted as the public agency representative. The complainant further alleges that general education teachers in math and language arts were not present and, as a result, she did not have the opportunity to discuss her concerns with them (Doc. a and interview with the complainant).

Based on the Finding of Fact #26, the MSDE finds that there is no prohibition against the instructional associate serving as the public agency representative. Based on the Findings of Facts #26 and #27, the MSDE further finds that the IEP does not require the provision of special education instruction in math and language arts by a general education teacher and there is documentation that both a general education teacher and a special education teacher of the student attended the meeting. Therefore, the MSDE finds that the meeting included proper participants and that no violation occurred regarding this IEP team meeting.

May 21, 2012 IEP Team Meeting

In this case, the complainant alleges that the BCPS school psychologist was required to participate in order for the team to consider the results of the private neuropsychological assessment that she had obtained (Doc. a and interview with the complainant).

As stated above, in Allegation #1f, when a parent shares an evaluation obtained at private expense, the results of the evaluation must be considered by the public agency, if it meets agency criteria, in any decision made with respect to the provision of a FAPE to the student (34 CFR § 300.502). However, the IDEA does not require a determination that an IEE meets agency criteria in order for the IEP team to consider an evaluation obtained at private expense.

Based on the Finding of Fact #29, the MSDE finds that there is documentation that a BCPS school psychologist reviewed the results of the private neuropsychological assessment prior to the May 21, 2012 IEP team meeting and did not indicate concerns about its meeting agency criteria. Therefore, the MSDE finds that the school psychologist was not required to participate in the meeting in order for the IEP team to consider the results of the assessment.

Further, based on the Finding of Fact #28, the MSDE finds that the psychologist who conducted the private assessment was present at the meeting to interpret the results of the assessment. Therefore, the MSDE finds that proper participants were in attendance at the meeting because the private psychologist served as the individual who can interpret the instructional implication of evaluation results. As a result, the MSDE finds no violation regarding this IEP team meeting.

ALLEGATION #5: **MAINTENANCE OF THE EDUCATIONAL RECORD**

Finding of Fact:

30. An on-site review of the student's education record indicates that the reports of the results of assessments conducted between December 2008 and February 2009 are maintained in the record (On-site review of educational record).

Discussion/Conclusions:

In order to ensure that students are provided with services in accordance with the requirements of the IDEA, the public agency must accurately record information about each student, as specified in the *Maryland Student Records System Manual (Manual)* (COMAR 13A.08.02.04 and 13A.08.02.28). The *Manual* requires that the public agency maintain information related to the student's enrollment, attendance, and promotion. The *Manual* also requires that, for students with disabilities, a copy of the student's IEP and related documentation of the student's program, including assessment reports, be maintained in the student's educational record.

In this case, the complainant alleges that the student's educational record does not contain copies of the reports of the results of assessments conducted in 2008 (Doc. a and interview with the complainant). Based on the Finding of Fact #30, the MSDE finds that copies of these assessments are maintained in the educational record. Therefore, the MSDE finds no violation regarding this allegation.

CORRECTIVE ACTIONS/TIMELINES:

Student-Specific

The MSDE requires the BCPS to provide documentation by September 15, 2012, that an IEP team has reviewed and revised, as appropriate, the student's IEP to ensure the following:

1. The present levels of academic achievement and functional performance contain information about the specific skills in which the student demonstrates needs that arise out of his disability;
2. The annual goals are designed to address the specific skills identified in the present levels of academic achievement and functional performance as areas of need; and
3. The consideration of the effect transportation may have on the student in relation to the amount of time involved in transporting the student and the distance the student will be transported is documented.

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The IEP team must also determine the amount and nature of *compensatory services*³ or other remedy necessary to redress the violations identified in the Letter of Findings.

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

School-Based

The MSDE requires the BCPS to provide documentation by October 31, 2012, of the steps it has taken to determine if the violations identified in the Letter of Findings 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 the MSDE. If the school system reports compliance with the requirements, the MSDE staff will verify compliance with the determinations found in the initial report.

If the school system determines that the regulatory requirements are not being implemented, the school system must identify the actions that will be taken to ensure that the violations do not recur. The school system must submit a follow-up report to document correction within ninety (90) days of the initial date that the school system determines non-compliance.

Upon receipt of this report, the MSDE will re-verify the data to ensure continued compliance with the regulatory requirements, consistent with the requirements of the OSEP. Additionally, the findings in the Letter of Findings will be shared with the MSDE's Office of Quality Assurance and Monitoring for Continuous Improvement for its consideration during present or future monitoring of the BCPS.

Documentation of all corrective actions taken is to be submitted to this office to: Attention: Chief, 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 the complainant and the school system have the right to submit additional written documentation to this office, which must be received within fifteen (15) days of the date

³ 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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of this letter, if they disagree with the findings of fact or conclusions reached in this Letter of Findings. The additional written documentation must not have been provided or otherwise available to this office during the complaint investigation and must be related to the issues identified and addressed in the Letter of Findings. If additional information is provided, it will be reviewed and the MSDE will determine if a reconsideration of the conclusions is necessary. Upon consideration of this additional documentation, this office may leave its findings and conclusions intact, set forth additional findings and conclusions, or enter new findings and conclusions. Pending the decision on a request for reconsideration, the school system must implement any corrective actions consistent with the timeline requirements as reported in this Letter of Findings.

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