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December 30, 2016

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Mr. Philip A. Lynch
Director of Special Education Services
Montgomery County Public Schools
850 Hungerford Drive, Room 225
Rockville, Maryland 20850

RE: XXXXX
Reference: #17-047

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 November 1, 2016, the MSDE received a complaint from Ms. XXXXXXXXXXXXXXXXXXXX, hereafter, “the complainant,” on behalf of her son, the above-referenced student. In that correspondence, the complainant alleged that the Montgomery County Public Schools (MCPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to the student.

The MSDE investigated the following allegations:

1. The MCPS did not ensure that the Individualized Education Program (IEP) team meeting convened in December 2015 was scheduled at a mutually agreed upon time and place, in accordance with 34 CFR §300.322.
2. The MCPS did not ensure that the IEP team conducted a review of the February 2015 IEP at least annually, in accordance with 34 CFR §300.324.

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3. The MCPS did not ensure that the February 2016 reevaluation of the student was completed within the required timelines, in accordance with 34 CFR §§300.301 and COMAR 13A.05.01.06.
4. The MCPS did not ensure that the IEP team meeting convened on February 9, 2016 had the required participants, including the occupational therapist whose area was being discussed, in accordance with 34 CFR §300.321.
5. The MCPS did not ensure that copies of each assessment, report, data chart, or other document that the IEP team planned to discuss at the February 9, 2016 IEP team meeting were provided at least five (5) business days before the scheduled meeting, in accordance with COMAR 13A.05.01.07.
6. The MCPS did not ensure that the IEP team meeting convened on June 14, 2016 had the required participants, including a representative of the MCPS who is knowledgeable about the availability of resources of the public agency, in accordance with 34 CFR §300.321.
7. The MCPS did not ensure that the determination of the student's educational placement in the Least Restrictive Environment was made by the IEP team, including the parent, at the June 14, 2016 IEP team meeting, in accordance with 34 CFR §§300.114-.116 and .324.
8. The MCPS did not ensure that the completed IEP was provided within five (5) business days after the June 14, 2016 IEP team meeting, in accordance with COMAR 13A.05.01.07. Specifically, it is alleged that the MCPS did not provide the complainant with a copy of the Behavior Intervention Plan which is required by the IEP.
9. The MCPS has not ensured that an instructional specialist has assessed the student and made recommendations for an appropriate research-based math intervention program, as determined by the IEP team meeting on June 14, 2016, in accordance with 34 CFR §§300.101 and .323.
10. The MCPS did not follow proper procedures when responding to the requests made in September and October 2016 to amend the student's educational record, in accordance with 34 CFR §§300.618 - .621.

INVESTIGATIVE PROCEDURES:

1. On November 3, 2016, the MSDE provided a copy of the State complaint, by facsimile, to Mr. Philip A. Lynch, Director of Special Education, MCPS.

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2. On November 9, 2016, Ms. K. Sabrina Austin, Education Program Specialist, MSDE, conducted a telephone interview with the complainant to clarify the allegations to be investigated.
3. On November 15, 2016, the MSDE sent correspondence to the complainant that identified the allegations subject to this investigation. On the same date, the MSDE notified the MCPS of the allegations and requested that the MCPS review the alleged violations.
4. On November 16 and 23, 2016 and December 2 and 6, 2016, the MSDE received documentation from the complainant.
5. On November 16 and 21, 2016, and December 6, 13, 28 and 29, 2016, the MSDE requested documentation from the MCPS.
6. On November 20, 2016, the MSDE provided documentation received from the complainant to the MCPS.
7. On November 30, 2016, and December 5 - 7, 13, 23, 28 and 29, 2016, the MCPS provided documentation to the MSDE for consideration.
8. On December 6, 2016, Ms. Austin conducted a review of the student's educational record at the MCPS Central Office, and discussed the allegations with Ms. Tracee Hackett, Supervisor, Resolution and Compliance Unit, and Ms. Patricia Grundy, Paralegal, Resolution and Compliance Unit, as representatives of the MCPS. On the same date, the MCPS provided documentation to the MSDE for consideration.
9. On December 9, 2016, the MSDE received the MCPS's written response to the complainant, dated December 9, 2016.
10. On December 29, 2016, Ms. Austin discussed the allegations with Ms. Hackett and Ms. Grundy.
11. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
 - a. The MCPS's correspondence to the MSDE in response to the complaint, dated December 9, 2016;
 - b. Electronic mail (email) communications between the complainant and the school system staff, and among the school system staff, from March 2015 to November 2016;
 - c. IEP, dated February 11, 2015;
 - d. Notices for IEP team meetings scheduled for January 19, 2016, February 2, 9 and 26, 2016, May 25, 2016, and June 14, 2016;

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- e. The MCPS “5 Day Verification” form identifying documents that were sent to the complainant on February 2, 2016 for discussion at the IEP team meeting scheduled for February 9, 2016;
- f. Audio recordings of the February 26, 2016 and June 14, 2016 IEP team meetings;
- g. Agenda prepared by the school staff for the February 26, 2016 IEP team meeting;
- h. The MCPS “5 Day Verification “ form identifying documents that were sent to the complainant on February 19, 2016 for discussion at the IEP team meeting scheduled for February 26, 2016;
- i. IEP and Prior Written Notice, dated February 26, 2016;
- j. The MCPS “5 Day Verification “ form identifying documents that were sent to the complainant on May 18, 2016 for discussion at the IEP team meeting scheduled for May 25, 2016;
- k. Meeting Information and Sign In Page, and Continued Eligibility Documentation forms, for the May 25, 2016 IEP team meeting;
- l. IEP and Prior Written Notice, dated June 14, 2016;
- m. The complainant’s consent for assessments, dated February 26, 2016;
- n. The MCPS Reevaluation Planning form documenting the IEP team’s reevaluation planning at the February 26, 2016 IEP team meeting;
- o. Functional Behavioral Assessment, dated May 25, 2016;
- p. Behavioral Intervention Plan, dated June 6, 2016;
- q. Meeting Information and Sign In Page forms for the February 26, 2016 IEP team meeting;
- r. Meeting Information and Sign In Page forms for the June 14, 2016 IEP team meeting;
- s. The report of an occupational therapy supplemental evaluation, dated October 20, 2016;
- t. The report of an occupational therapy status update, dated May 19, 2016;
- u. Amended IEP, dated October 13, 2016;
- v. IEP and Prior Written Notice, dated November 15, 2016;
- w. IEP and Prior Written Notice, dated December 16, 2016;
- x. Scholastic’s Alignment Guide describing the “FASTT Math” intervention program, undated;
- y. Documentation of the student’s use of “FASTT Math,” November 10, 2016 to December 1, 2016;
- z. Correspondence from the complainant alleging violations of the IDEA, received by the MSDE on November 1, 2016; and
- aa. Email from the school system staff to the MSDE, dated December 29, 2016.

BACKGROUND:

The student is nine (9) years old and attends XXXXXXXXXXXXXXXXXXXXXXXX. He is identified as a student with Autism under the IDEA, and has an IEP that requires the provision of special education and related service (Docs. c, i, l and u).

During the period of time addressed by this investigation, the complainant was provided with written notice of the procedural safeguards (Doc. i).

ALLEGATIONS #1 - #3

SCHEDULING THE DECEMBER 2015 IEP TEAM MEETING; CONDUCTING THE ANNUAL REVIEW OF THE FEBRUARY 2015 IEP; AND COMPLETION OF THE FEBRUARY 2016 REEVALUATION

FINDINGS OF FACTS:

1. The IEP in effect in December 2015 was developed on February 11, 2015 (Doc. c).
2. There is no documentation that an IEP team meeting was convened in December 2015. However, there is documentation that, in December 2015, the school staff began attempts to schedule an IEP team meeting in order to conduct the annual review of the student's educational program (Docs. a - d, and interview with the school system staff).
3. There is documentation that, on December 8 and 18, 2015, the MCPS prepared invitation notices for IEP team meetings to conduct the annual review of the student's IEP. The meetings were scheduled for the afternoons of January 19, 2016 and February 2, 2016 (Doc. d).
4. On December 18, 2015, the complainant and the school staff exchanged several emails discussing the scheduling and purpose of the IEP team meeting. The complainant indicated that, while she was unavailable to attend an IEP team meeting scheduled for January 19, 2016 at 2:45 p.m., she would be available to attend an IEP team meeting at a later date in the morning (Doc. b).
5. The December 18, 2015 email exchanges between the complainant and school staff document the complainant's request for a reevaluation. The complainant also requested that the student's reevaluation be conducted before the annual review meeting which the school staff were attempting to schedule. In its email response to the complainant, the school staff acknowledged the "need to have both an annual review (the normal IEP meeting every year) and a reevaluation planning meeting" (Doc. b).
6. On December 19, 2015, the complainant sent an email to the school staff stating that the IEP team meeting "has to be [scheduled] in the morning starting at 10 am" (Doc. b).
7. Also on December 19, 2015, the school staff sent an email to the complainant explaining that the annual review of the student's IEP, and reevaluation planning, must occur by February 11, 2016. The school staff proposed that both actions could be conducted by the IEP team together at one (1) meeting (Doc. b).

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8. On December 23, 2015, via email, the school staff sent the complainant two (2) separate invitation notices for an IEP team meeting scheduled for February 9, 2016 at 10:00 in the morning. While the notices identified the same time and date for the meeting, the notices indicate that the purpose of the meeting was twofold: (1) to conduct reevaluation planning, and (2) to conduct the annual review of the student's February 11, 2015 IEP (Docs. b and d).
9. Due to a weather-related shortened school day, the IEP team did not convene on February 9, 2016, as scheduled. The school staff rescheduled the meeting for February 26, 2016 (Docs. a, b and d, and interview with the school system staff).
10. On February 26, 2016, the IEP team convened and conducted reevaluation planning. The IEP team determined that additional information was needed in order to determine the student's present levels of functioning, his special education and related services needs, and whether any additions or modifications are needed to enable him to achieve the annual IEP goals and to participate in the general education curriculum. The IEP team identified specific diagnostic questions and recommended assessments in the areas of academics, speech and language, and occupational therapy, as well as a comprehensive psychological assessment, a Functional Behavior Assessment (FBA) and a Behavioral Intervention Plan (BIP). On the same date, the complainant signed consent for the recommended assessments to be conducted (Docs. f, i, m and n).
11. A review of the audio recording of the February 26, 2016 IEP team meeting documents that the IEP team agreed that the occupational therapy assessment to be conducted would include a sensory profile in order to obtain additional information about the student's self-regulation (Doc. f).
12. The review of the audio recording of the February 26, 2016 IEP team meeting documents that the IEP team was unable to conduct the annual review of the student's IEP due to the complainant's refusal to proceed before completion of the assessments that the IEP team agreed were necessary for reevaluation. The IEP team decided to continue the IEP until the reevaluation was completed, and to conduct the review of the student's IEP at that later date (Docs. a, f and i).
13. On May 25, 2016, the IEP team reconvened for the purpose of reviewing the results of the assessments that were recommended at the February 26, 2016 reevaluation planning meeting. There is no documentation that the IEP team reviewed the student's IEP at this meeting (Docs. d, j and k, and review of the student's educational record).

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14. There is documentation indicating that the IEP team reviewed an educational assessment, a psychological assessment, and a speech and language assessment at the May 25, 2016 IEP team meeting. However, there is no documentation that the other assessments that the IEP team agreed would be conducted for the February 2016 reevaluation, specifically an occupational therapy assessment and sensory profile, as well as an updated FBA and BIP, had been completed for the IEP team to review at the May 25, 2016 IEP team meeting (Docs. j and k, review of the student's educational record, and interview with the school system staff).
15. The MCPS acknowledges that, at the time of the May 25, 2016 IEP team meeting, all of the assessments that had been recommended by the IEP team at the February 2016 reevaluation meeting had not been completed (Doc. a).
16. On June 14, 2016 the IEP team reconvened. The IEP team reviewed the updated FBA and BIP that were completed for the reevaluation, and made revisions to the student's BIP (Docs. d, f and l).
17. The audio recording of the June 14, 2016 meeting documents that, based on the reevaluation data obtained from the results of the reevaluation assessments that had been completed, the IEP team updated the present levels of performance, revised the IEP goals, and made revisions to the student's specialized instruction. The audio recording also documents that the IEP team completed the annual review, and agreed that the student will have one (1) year from the date of the meeting to work on the newly developed IEP goals, noting that his next annual review date is June 14, 2017 (Docs. d, f and l).
18. The audio recording of the June 14, 2016 IEP team meeting documents that the complainant expressed concern that the school system staff had not yet conducted the occupational therapy assessment and sensory profile that were recommended by the IEP team at the February 2016 reevaluation planning meeting (Doc. f).
19. The IEP team discussed that the occupational therapy assessment and sensory profile were recommended in order to obtain additional information about the student's sensory needs. They also developed a diagnostic question to clarify the focus of the sensory profile. The IEP team agreed to "complete this assessment within the first 30 [thirty] days of school" (Docs. f and l).
20. On September 19, 2016, the complainant sent an email to the school staff inquiring about the completion of the occupational therapy assessment (Doc. b).
21. On November 15, 2016, the IEP team reviewed the report of an occupational therapy supplemental evaluation dated October 20, 2016. The report includes the results of sensory profiles completed by two (2) of the student's teachers, as well as their

completion of a sensory symptoms checklist. The report reflects that the student's needs are already being addressed through the current supports in the IEP (Docs. s and v).

DISCUSSION/CONCLUSIONS:

Allegation #1 Scheduling the December 2015 IEP Team Meeting at a Mutually Convenient Time and Place

The public agency is required to take steps to ensure a parent of a student with a disability is present or is afforded the opportunity to attend and participate in IEP team meetings, including notifying the parent of the meeting early enough to ensure that the parent will have an opportunity to attend and scheduling the meeting at a mutually convenient time and place (34 CFR §300.322).

Based on the Finding of Fact #2, the MSDE finds that there is no documentation that an IEP team convened in December 2015. However, based on the Findings of Facts #1 - #8, the MSDE finds that, during their attempts, in December 2015, to schedule an IEP team meeting, the MCPS was responsive to the complainant's request for scheduling the meeting at a time that was mutually convenient for her. Therefore, this office does not find that a violation occurred with respect to this allegation.

Allegation #2 Conducting an Annual Review of the February 2015 IEP

The IEP team must review the IEP periodically, but not less than annually, to determine whether the annual goals are being achieved. The IEP team must also revise the IEP to address any lack of expected progress toward achieving the goals, to reflect the results of any reevaluation, to reflect information about the student provided to or by the student's parent, or to address the student's anticipated needs (34 CFR §300.324). In reviewing and revising an IEP, the team must consider concerns of parents, the results of the most recent evaluation, and the academic, developmental, and functional needs of the student (34 CFR §300.324).

Based on the Findings of Facts #1 - #3, #5, #8 - #10, #12, #16 and #17, the MSDE finds that the MCPS did not ensure that the February 11, 2015 IEP was reviewed within one (1) year of its development. Therefore, the MSDE finds that the annual review was not conducted in a timely manner, and that a violation occurred.

Notwithstanding the violation, based on the Finding of Fact #12, the MSDE finds that the annual review of the student's IEP was delayed in order to ensure the complainant's participation. Therefore, no corrective action is required.

Allegation #3 Completion of the February 2016 Reevaluation

As part of the reevaluation process, the IEP team must review existing data, including evaluations and information provided by the parents, current classroom-based, local, or State assessments, classroom-based assessments, and observations by teachers and related service providers. On the basis of that review, and input from the student’s parents, the team must identify what additional data, if any, are needed to determine whether the student continues to meet the criteria for identification as a student with a disability and whether any additions or modifications to the special education and related services are needed to enable the student to meet the measurable annual goals in the IEP (34 CFR §300.305 and COMAR 13A.05.01.06).

If additional data is needed, the public agency must ensure that assessments are conducted, the results are considered by the IEP team, and the IEP is reviewed and revised, as appropriate, within ninety (90) days of the date the team determines that assessments are required (COMAR 13A.05.01.06E).

Based on the Findings of Facts #10, #11, and #13 - #21, the MSDE finds that the MCPS did not ensure that the reevaluation was completed within the required timelines. Therefore, the MSDE finds a violation occurred with respect to this allegation.

**ALLEGATION #4 IEP TEAM PARTICIPANTS AT THE
FEBRUARY 9, 2016 IEP TEAM MEETING**

FINDINGS OF FACTS:

22. The IEP team meeting, which was scheduled for February 9, 2016, was rescheduled for February 26, 2016. The purpose of the meeting was to conduct a reevaluation and annual review of the IEP. The IEP team included an administrator, a regular education teacher of the student, a special education teacher of the student, a speech/language therapist, a psychologist, and a resource teacher. It did not include an occupational therapist (Docs. d, f and q).
23. At the February 26, 2016 IEP team meeting, the complainant expressed new areas of concern related to the student’s ability to “self-regulate.” A review of the audio recording of the meeting documents that, at the complainant’s request, the IEP team agreed to recommend that an occupational therapy assessment be conducted, which would include a sensory profile in order to identify any self-regulation needs. However, the IEP team did not specify in the documentation that the assessment was to obtain this information (Docs. f, i m, and n).
24. On June 14, 2016, the IEP team convened to review assessment results and to conduct a review of the IEP. At that time, it was discussed that the information about the student’s sensory needs was not obtained, and therefore, additional data was needed (Doc. f).

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25. On November 15, 2016, the IEP team reviewed the results of the data collected on the student's sensory needs, which indicates that the needs are already being addressed through the IEP. Therefore, the team decided to monitor the student's progress with the current supports (Docs. l, s and v).

DISCUSSION/CONCLUSIONS:

The IEP team must include not less than one (1) regular education teacher of the student, not less than one (1) special education teacher or provider of the student, a representative of the public agency, and an individual who can interpret the instructional implications of evaluation results, who may also be a required member of the IEP team. The IEP team may also include other individuals who have knowledge or special expertise regarding the student, including related service personnel, as appropriate (34 CFR §300.321).

Based on the Finding of Fact ##22, the MSDE finds that the IEP team did not convene on February 9, 2016, as alleged. Therefore, a violation is not identified with respect to the allegation.

Further, based on the Findings of Facts #22 and #23, the MSDE finds that there is no information that the IEP team that convened on February 26, 2016 required the participation of an occupational therapist. Therefore, this office does not find a violation with respect to the allegation for this time period.

However, based on the Findings of Facts #23 - #25, the MSDE finds, as stated above in Allegation #3, that the MCPS did not ensure that the reevaluation was completed in a timely manner and that a violation occurred. Notwithstanding the violation, based on the Finding of Fact #25, the MSDE finds that no new sensory needs were identified, and therefore, no student-specific corrective action is required.

ALLEGATION #5

PROVISION OF DOCUMENTS TO THE COMPLAINANT FIVE (5) BUSINESS DAYS PRIOR TO THE FEBRUARY 9, 2016 IEP TEAM MEETING

FINDINGS OF FACTS:

26. The IEP team meeting scheduled for February 9, 2016 did not convene as the result of a weather-related shortened school day. The IEP team did convene on February 26, 2016 (Docs. d and f).
27. The MCPS acknowledges that it "does not have documentation that all assessments, reports, and/or other documentation to be discussed at the meeting were provided to the parent five (5) business days in advance" of either meeting (Doc. a).

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28. There is documentation that the school staff prepared an agenda listing the topics intended for discussion at the February 26, 2016 IEP team meeting. The topics included “discuss updates to the student’s Behavior Intervention Plan,” “discuss psychological assessment options,” and “discuss assessment needs” (Docs. b, d, f and g).
29. There is documentation indicating that the school staff did not provide the complainant with each document that it intended to discuss at the meeting five (5) business days in advance of the meeting, including, the Functional Behavior Assessment (FBA), Behavior Intervention Plan (BIP), the 2013 speech and language update, and the 2013 educational assessment. However, a review of the audio recording of the meeting documents that, while the IEP team identified these assessments, the IEP team only referenced the dates when these documents were developed, and did not discuss or review the content of these documents at the February 25, 2016 IEP team meeting (Docs. b, d, f and g).

DICUSSION/CONCLUSIONS:

At least five (5) business days before a scheduled IEP team meeting, the student’s parent must receive an accessible copy of each assessment, report, data chart, draft IEP, if applicable, or other document the team plans to discuss at the meeting (COMAR 13A.05.01.07).

Based on the Finding of Fact #26, the MSDE finds that the IEP team did not convene on February 9, 2016. Based on the same Finding of Fact, the MSDE finds that the IEP team convened on February 26, 2016.

Based on the Findings of Facts #26 - #29, the MSDE finds that, the complainant was not provided with copies of all documentation that the team planned to discuss at the IEP team meeting. Therefore, the MSDE finds that a violation occurred.

Notwithstanding the violation, based on the Finding of Fact #29, the MSDE finds that the documents were not discussed at the IEP team meeting. Therefore, this office does not require student-specific corrective action.

ALLEGATIONS #6 AND #7

PARTICIPATION IN THE JUNE 14, 2016 IEP TEAM MEETING AND PLACEMENT DECISION

30. At the June 14, 2016 IEP team meeting, the team considered the Least Restrictive Environment (LRE) in which the IEP could be implemented. The team decided that the IEP could be implemented in the general education classroom for two academic classes with the provision of additional adult support. The team decided that the student required a separate special education classroom for all of his remaining classes. When the complainant requested the possibility of providing additional adult support in

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nonacademic classes in order to implement the IEP in the general education setting, she was informed that there was no one on the team with authority to agree to that support. Therefore, the team did not consider the complainant's request. The complainant also requested that the team consider implementing the IEP in a Learning and Academic Disabilities (LAD)¹ program, which would provide him with the opportunity to receive instruction in a smaller setting with nondisabled students. The IEP team did not consider the complainant's request, but instead suggested that she visit an LAD program before the team considered such a placement (Doc. f).

31. The IEP team has subsequently convened on November 15, 2016 and December 16, 2016. While the school system staff indicate that no additional adult support is required, there is no documentation that the IEP team has determined that, even with such support, the IEP could not be implemented in a general education classroom. In addition, there is no documentation that the complainant's requests for the supports provided in a LAD program have been considered at either meeting (Docs. v and w).

DISCUSSION/CONCLUSIONS:

The IEP team must include the student's parent, at least one (1) regular education teacher of the student if the student is, or may be, participating in the regular education environment, at least one (1) special education teacher of the student, a representative of the public agency who is qualified to provide or supervise the provision of specially designed instruction, is knowledgeable about the general education curriculum, and about the availability of resources of the public agency, an individual who can interpret the instructional implication of evaluation results, at the discretion of the parent or public agency, other individuals who have knowledge or special expertise regarding the student, including related services personnel, as appropriate, and the student when appropriate (34 CFR §300.321).

The public agency must ensure that the educational placement decision is based on the IEP, that the student is placed in the LRE in which those services can be successfully provided with provision of supplementary aids and services, and that the placement is as close as possible to the student's home (34 CFR §300.116).

Based on the Findings of Facts #30 and #31, the MSDE finds that the MCPS has not ensured that the IEP team has considered the supplementary aids and services requested by the complainant when determining the LRE in which the IEP can be implemented. Based on the Finding of Fact #30, the MSDE finds that, in part, this was due to the IEP team not including a public agency representative who was knowledgeable about the availability of resources of the public agency. Therefore, this office finds that violations occurred with respect to Allegations #6 and #7.

¹ The LAD program serves students who previously received considerable amounts of special education in the general education environment but require additional services in order to demonstrate progress toward IEP goals and objectives. Selected elementary schools provide this service (MCPS website).

ALLEGATION #8

**PROVISION OF THE COMPLETE IEP
FOLLOWING THE JUNE 14, 2016 IEP TEAM
MEETING**

32. On June 14, 2016, the IEP team convened and revised the student's IEP (Doc. l).
33. A review of the audio recording of the June 14, 2016 IEP team meeting documents that the IEP team revised the student's BIP in order to address his interfering behaviors (Doc. f).
34. The MCPS acknowledges that there is no documentation that the complainant was provided with a complete copy of the IEP, including the revised BIP, within five (5) days of the June 14, 2016 IEP team meeting (Doc. a).

DISCUSSION/CONCLUSIONS:

The public agency must ensure that parents are provided with a copy of the IEP within five (5) business days of the date of an IEP team meeting. If the IEP has not been finalized, a draft IEP must be provided. However, a violation of this requirement does not constitute a denial of a Free Appropriate Public Education (FAPE) (COMAR 13A.05.01.07).

Based on the Findings of Facts #32 - #34, the MSDE concurs with the MCPS, and finds a violation occurred. Notwithstanding the violation, no student-specific corrective action is required.

ALLEGATION #9

**ASSESSMENT BY AN INSTRUCTIONAL
SPECIALIST**

35. At the June 14, 2016 IEP team meeting, the complainant expressed concern that the student was performing almost two years below grade level in math, and requested that he be provided with instruction using an evidence-based math intervention program to increase his rate of progress (Docs. f and l).
36. A review of the audio recording of the June 14, 2016 IEP team meeting reflects that the IEP team agreed that an evidence-based math intervention program would be identified, but the team did not document its decision that an intervention was required (Docs. f and l).
37. On September 22, 2016, the complainant requested that the school staff have an assessment conducted by an instructional specialist in order to determine the math

intervention to be provided. The school staff responded that they had already identified the intervention to be used (Doc. b).

DISCUSSION/CONCLUSIONS:

The public agency must ensure that students are provided with the special education services required by the IEP. In order to do so, the public agency must ensure that the IEP is written in a manner that is clear with respect to the amount of services to be provided. However, the IDEA does not require an IEP to include specific instructional methodologies to be used (34 CFR §§300.101 and .323 and Federal Register, Vol. 71, No. 156, August 14, 2006, p. 46665).

In this case, the complainant alleges that the school system staff do not have the authority to determine the specific math intervention program that will be used with the student and that an assessment is needed in order for the IEP team to determine the specific intervention to be provided (Docs. b and z).

There is no requirement that the IEP team determine the specific intervention to be used. Based on the Findings of Facts #35 and #37, there is no documentation that the IEP team determined that an instructional specialist would conduct an assessment of the student in order to identify an appropriate math intervention. Therefore, the MSDE does not find a violation with respect to the identified allegation.

However, based on the Finding of Fact #36, the MSDE finds that the IEP is not written clearly with respect to the IEP team's decision that the student requires an evidenced-based math intervention. Therefore, this office finds that a violation occurred.

ALLEGATION #10

THE COMPLAINANT'S REQUEST FOR AMENDMENT OF THE JUNE 14, 2016 IEP

FINDINGS OF FACTS:

38. On September 19, 2016 and October 8, 2016, the complainant requested that the school staff amend the June 14, 2016 IEP to reflect the IEP team's decision that a BIP is required. On October 11, 2016, the complainant made the same request to MCPS Central Office staff (Doc. b).
39. In response, the school system staff refused to amend the document without the complainant providing her written consent to do so and did not inform her of her right to request a hearing to contest the educational record (Doc. b).

40. Subsequently, on October 13, 2016, the MCPS Central Office staff made the amendment to the IEP, as requested by the complainant (Doc. 1).
41. The MCPS staff acknowledge that the amendment should have been made sooner (Doc. a).

DISCUSSION/CONCLUSIONS:

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

Based on the Findings of Facts #38 -#41, the MSDE finds that the MCPS did not follow proper procedures when initially responding to the complainant's request to amend the June 14, 2016 IEP. Therefore, the MSDE finds that a violation occurred.

However, based on the Finding of Fact #40, the MSDE finds that the MCPS has amended the June 14, 2016 IEP consistent with the complainant's request for an amendment. Therefore, the MSDE does not require any student-specific corrective action.

CORRECTIVE ACTIONS/TIMELINES:

Student-Specific

The MSDE requires the MCPS to provide documentation by March 1, 2017 that the IEP team has taken the following actions:

- a. Determined whether the IEP can be implemented in a less restrictive setting with the provision of the supplementary aids and services of additional adult support and participation in the LAD program;
- b. Reviewed and revised the IEP to ensure that it is written clearly with respect to the math intervention services;
- c. Determined whether the delay in revising the BIP and considering supplementary aids and services requested by the complainant and the lack of clarity in the IEP with respect to the math intervention services had a negative impact on the student's ability to benefit from the education program; and

- d. If a negative impact is found with respect to any of the violations above, determined the compensatory services or other remedy to remediate the violation.

If a negative impact is found with respect to any of the violations above, the MCPS must provide the MSDE with documentation that the compensatory services or other remedy has been provided to the student within one year of the date of this Letter of Findings.

School-Based

The MSDE requires the MCPS to provide documentation by April 1, 2017 of the steps taken to ensure that the XXXXXXXXXXXXXXXXXXXXXXXX staff comply with the following requirements:

- a. Consider parent requests for supplementary aids and services when determining the LRE in which the IEP can be implemented;
- b. Ensure that the IEP is written clearly with respect to the services to be provided;
- c. Provide parents with copies of each assessment, report, data chart, draft IEP, if applicable, or other document that the IEP team plans to discuss at the meeting at least five (5) business days in advance of the meeting;
- d. Provide parents with the complete IEP within five (5) business days of the date of the IEP team meeting; and
- e. Decide within a reasonable amount of time whether to grant a request for amendment of the record, and advise parents of the right to a hearing to challenge information in the record when the request is denied.

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

TECHNICAL ASSISTANCE:

Technical assistance is available to the parties by contacting Dr. Nancy Birenbaum, Compliance Specialist, Family Support and Dispute Resolution Branch, MSDE at (410) 767-7770.

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

XXX

Mr. Philip A. Lynch

December 30, 2016

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

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

Sincerely,

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

MEF:ksa

c: Jack Smith
Chrisandra A. Richardson
Philip A. Lynch
Tracee Hackett
XXXXXXXX
Dori Wilson
Anita Mandis
K. Sabrina Austin
Nancy Birenbaum