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Interim State Superintendent of Schools

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December 28, 2011

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Ms. Mary Tillar
Director of Special Education
Anne Arundel County Public Schools
2644 Riva Road
Annapolis, Maryland 21401

RE: XXXXX
Reference: #12-033

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.

ALLEGATION:

On November 8, 2011, the MSDE received a complaint from Mr. XXXXXXXXX, Jr., hereafter, “the complainant,” on behalf of his son. In that correspondence, the complainant alleged that the Anne Arundel County Public Schools (AACPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to the above-referenced student. The MSDE investigated the allegation that the AACPS conducted an assessment of the student on October 24, 2011 without obtaining parental consent, in accordance with 34 CFR §300.300.

INVESTIGATIVE PROCEDURES:

1. Ms. Christine R. Hartman, Education Program Specialist, MSDE, was assigned to investigate the complaint.
2. On November 8, 2011, the MSDE sent a copy of the complaint, via facsimile, to Ms. Mary Tillar, Director of Special Education, AACPS.
3. On November 17, 2011, Ms. Hartman conducted a telephone interview with the complainant and clarified the allegation to be investigated.

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4. On November 18, 2011, the MSDE sent correspondence to the complainant that acknowledged receipt of the complaint and identified the allegation subject to this investigation. On the same date, the MSDE notified Ms. Tillar of the allegation and requested that her office review the alleged violation.
5. On November 15 and 29, 2011, and December 7, 9, 20 and 21, 2011, the AACPS provided the MSDE with documentation related to the allegation, via facsimile and electronic mail (email).
6. On November 17, 22 and 23, 2011, and December 2 and 21, 2011, the complainant provided the MSDE with documentation related to the allegation, via email.
7. On November 30, 2011, Ms. Hartman and Ms. Anita Mandis, Section Chief, Complaint Investigation Section, MSDE, met with Ms. Ellen Meyer, Coordinator of Compliance, AACPS, and Ms. Ruth Avizad, Compliance Specialist, AACPS, and discussed the AACPS policies and procedures related to the allegation in the complaint.
8. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
 - a. Individualized Education Program (IEP) Team Meeting Report, dated November 17, 2011;
 - b. Email from the complainant to the AACPS, dated October 24, 2011;
 - c. Referral for Evaluation, dated October 25, 2011;
 - d. Student Evaluation Plan, dated November 17, 2011;
 - e. Consent for Evaluation, signed by the complainant on November 17, 2011;
 - f. State Complaint, dated November 8, 2011; and
 - g. Email from the complainant to the MSDE, dated December 2, 2011.

BACKGROUND:

The student is ten (10) years old and attends XXXXXXXXXXXXXXXXXXXX. An evaluation of the student's eligibility under the IDEA is currently pending. During the period of time addressed by this investigation, the complainant was provided with notice of the procedural safeguards (Doc. a).

FINDINGS OF FACTS:

1. The *AACPS Handbook for Special Education* states that classroom teachers and building administrators, or their designees, periodically and continuously screen the academic abilities and performance of school system students. The AACPS requires that the screening process commences upon receipt of a referral for evaluation, and that information obtained from the screening process be used, along with any other available data, by the IEP team in determining if the student is suspected of having a disability. The Handbook states that "individually administered standardized norm-referenced assessment instruments may not be used during the screening process," but may be used

only with parental consent as part of the evaluation process (*AACPS Handbook for Special Education*, Chapter 2, Identification, Evaluation and Eligibility, updated September 2009).

2. On October 24, 2011, the complainant requested an evaluation under the IDEA. On the same date, the school psychologist conducted a classroom observation in the student's language arts class. Information from this observation was provided as part of the screening process. The observer reported that the student listened to instruction and worked diligently on the class assignment (Docs. b and c).
3. On November 14, 2011, the student's teachers provided information, as part of the screening process, regarding observations by the teachers of the student's performance in the classroom (Doc. c and interview with AACPS staff).
4. On November 17, 2011, the IEP team convened and considered data, including information obtained from observations of the student's classroom performance. Based on this information, the team determined that the student was not suspected of having a disability and that an evaluation was not needed. However, because the complainant requested that an evaluation be conducted, the team agreed to do so. The team recommended that psychological, educational, speech/language, occupational therapy, and assistive technology assessments be conducted as well as a review, by the school nurse, of the student's medical records; the complainant provided consent (Docs. a, d and e).

DISCUSSION/CONCLUSION:

An evaluation is defined as procedures used to determine whether a student has a disability under IDEA and the nature and extent of the special education and related services that the student needs. A public agency must obtain parental consent before conducting an evaluation (34 CFR §§300.15 and .300).

Screening refers to the "relatively simple and quick process" that a teacher or specialist uses to determine appropriate instructional strategies to teach children. Because screening is not used to determine a student's eligibility under the IDEA or the special education and related services required by the student, it is not considered an evaluation and parental consent is not required (34 CFR §300.302 and Analysis of Comments and Changes to the IDEA, *Federal Register*, Vol. 71, No. 156, p. 46639, August 14, 2006).

The IDEA does not prohibit public agencies from using the screening process to determine if evaluations are necessary. However, screening may not be used to delay an evaluation for special education and related services (34 CFR §300.302 and Analysis of Comments and Changes to the IDEA, *Federal Register*, Vol. 71, No. 156, p. 46639, August 14, 2006).

In this case, the complainant alleges that the AACPS was required to obtain consent prior to conducting an observation and collecting classroom performance data as part of the screening process (Docs. f and g).

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Based on the Findings of Facts #1 – #4, the MSDE finds that the information collected as part of the screening process was used to assist the IEP team in determining whether an evaluation was necessary. Based on these Findings of Facts, this office finds that the AACPS was not required to obtain parental consent to collect information about the student's classroom performance as part of a screening process. Based on the Findings of Facts #2 and #4, the MSDE further finds that the AACPS convened an IEP team eighteen (18) school days following the complainant's request for evaluation, the IEP team decided that an evaluation would be conducted, and the complainant provided consent. Therefore, the MSDE finds that the screening process was not used to delay the completion of an evaluation, and does not find that a violation has occurred.

Please be advised that the parties have the right to submit additional written documentation to this office within fifteen (15) days of the date of this Letter of Findings if they disagree with the findings of facts or conclusions. The additional written documentation must not have been provided or otherwise been available to this office during the complaint investigation and must be related to the issues identified and addressed in the Letter of Findings. Upon consideration of this additional documentation, this office may leave its findings and conclusions intact, amend its findings and conclusions, set forth additional findings and conclusions, or enter new findings and conclusions.

Questions regarding the findings of facts or conclusions contained in this Letter of Findings should be addressed to this office in writing. The school system and the complainant 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 for the student, including issues subject to a State complaint investigation, in accordance with the IDEA. The MSDE recommends that this Letter of Findings be included with any request for mediation or the filing of a due process complaint.

Sincerely,

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

MEF/ch

cc : Kevin M. Maxwell
Ellen Meyer
Ruth Avizad
XXXXXXXXXX
Dori Wilson
Anita Mandis
Christine R. Hartman