



July 26, 2013

**CORRECTED COPY**  
(Issued July 31, 2013)

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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: #13-100

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 May 29, 2013, the MSDE received a complaint from Ms. XXXXXXXXXXXX, hereafter, “the complainant,” on behalf of her daughter. 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 following allegations:

1. The AACPS has not ensured that the student’s Individualized Education Program (IEP) addresses her social, emotional, and behavioral needs since the start of the 2012-2013 school year, in accordance with 34 CFR §300.324;
2. The AACPS did not ensure that the student’s IEP was implemented during the 2012-2013 school year, in accordance with 34 CFR §§300.101 and .323. Specifically, the complainant alleged that the following supports and services were not provided:
  - a. “Dedicated homework assistance;”
  - b. Electronic reports from the student’s teachers on a weekly and monthly basis;

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- c. An incentive program to encourage attendance and homework completion;
  - d. A "stress pass;"
  - e. Adult support both during the school day and after the school day; and
  - f. Organizational supports.
3. The AACPS did not provide the complainant with quarterly reports of the student's progress toward achieving the annual IEP goals during the 2012-2013 school year as required by the IEP, in accordance with 34 CFR §§300.101, 320, and .323.

**INVESTIGATIVE PROCEDURES:**

1. Ms. Kathy Stump, Education Program Specialist, MSDE, was assigned to investigate the complaint.
2. On May 30, 2013, the MSDE sent a copy of the complaint, via facsimile, to Ms. Mary Tillar, Director of Special Education, AACPS; and Ms. Alison Steinfelds, Program Manager, Compliance and Legal Issues, AACPS.
3. On May 31, 2013, Ms. Stump conducted a telephone interview with the complainant to clarify the allegations to be investigated.
4. On June 2, 2013, the complainant provided the MSDE with documentation to be considered in the investigation, via electronic mail (e-mail).
5. On June 4, 2013, 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 Ms. Tillar of the allegations and requested that her office review the alleged violations.
6. On June 6, 2013, Ms. Stump and Mrs. Martha J. Arthur, Education Program Specialist, MSDE, conducted a site visit at XXXXXXXXXXXXXXXX to review the student's educational record, and interviewed the following school staff:
  - a. Mr. XXXXXXXX, School Psychologist;
  - b. Ms. XXXXXXXX, Special Education Department Chairperson;
  - c. Ms. XXXXXXXX, Ninth (9<sup>th</sup>) Grade Interdisciplinary Team Leader;
  - d. Ms. XXXXXXXX, IEP Facilitator;
  - e. Ms. XXXXXXXX, School Nurse;
  - f. Ms. XXXXXXXX, Special Education Teacher's Assistant; and
  - g. Ms. XXXXXXXX, Literacy Specialist, School Based Resource Teacher.

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

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7. On that same date, the MSDE requested that the AACPS provide documentation from the student's educational record, including a copy of the daily log of "adult support" provided to the student during the 2012-2013 school year;
8. On June 19, 2013, the AACPS provided the MSDE with some of the documentation that was requested from the student's educational record, via United States mail.
9. On July 11, 2013, Ms. Stump conducted a telephone interview with Maureen van Stone, Esquire, Director of Project HEAL at Kennedy Krieger Institute, who has provided legal counsel to the family, at the request of the complainant.
10. On July 15, 2013, the MSDE requested that the AACPS provide additional information and documentation from the student's educational record, including the daily log of "adult support" provided to the student during the 2012-2013 school year.
11. On July 15 and 18, 2013, Ms. Stump requested that the complainant provide documentation related to the allegations, via e-mail.
12. On July 16, 2013, Ms. Stump requested that Ms. van Stone provide documentation related to the allegations, via e-mail.
13. On July 16, 2013, the AACPS provided the MSDE with some of the documentation that was requested, via facsimile and e-mail.
14. On July 17 and 18, 2013, Ms. Stump contacted Ms. Steinfelds, via telephone and email, and requested an on-site review of the daily log of "adult support" provided to the student during the 2012-2013 school year and was informed that it was not yet available.
15. On July 18, 2013, the AACPS provided the MSDE with some of the documentation requested, via e-mail.
16. On July 22, 2013, the complainant and Ms. van Stone provided the MSDE with the requested information and documentation, via e-mail.
17. 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 the MSDE, received on May 29, 2013;
  - b. Kennedy Krieger Institute *Neuropsychological Evaluation* report, dated July 16, 2008;
  - c. Section 504 Plan, dated June 7, 2011;

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- d. Correspondence from the student's private psychiatrist to the school staff, dated January 24, 2012;
- e. Kennedy Krieger Institute *Neuropsychological Evaluation Report*, dated January 25, 2012;
- f. AACPS documents related to Home and Hospital Teaching, dated January 27, 2012;
- g. Correspondence from the AACPS personnel to the complainant, dated February 1, 2012;
- h. Correspondence from the student's private psychiatrist to school staff, dated March 27, 2012;
- i. Correspondence from the AACPS personnel to the complainant, dated April 13, 2012;
- j. AACPS *Secondary Report Card*, dated June 2, 2012;
- k. Kennedy Krieger Institute *Initial Evaluation Note*, dated May 3, 2012;
- l. IEP Team Meeting Report, dated July 25, 2012;
- m. IEP Team Meeting Report, dated August 6, 2012;
- n. Psychological Assessment Report, dated August 13, 2012;
- o. IEP Team Meeting Report, dated August 22, 2012;
- p. IEP, dated August 22, 2012;
- q. E-mail correspondence between the complainant and the school staff, dated between August 23, 2012 and August 31, 2012;
- r. E-mail correspondence between the complainant and the school staff, dated between September 3, 2012 and September 28, 2012;
- s. XXXXXXXXXXXXXXXX *Individual Success Plan*, dated September 24, 2012;
- t. E-mail correspondence between the complainant and the school staff, dated between October 1, 2012 and October 31, 2012;
- u. IEP Team Meeting Report, dated November 8, 2012;
- v. E-mail correspondence between the complainant and the school staff, dated between November 8, 2012 and November 29, 2012;
- w. E-mail correspondence between the complainant and the school staff, dated between December 2, 2012 and December 10, 2012;
- x. Correspondence from the AACPS school system staff to the complainant, dated December 12, 2012;
- y. E-mail correspondence between the complainant and the school staff, dated between January 2, 2013 and January 4, 2013;
- z. E-mail correspondence between the complainant and the school staff, dated between February 20, 2013 and February 28, 2013;
- aa. E-mail correspondence between the complainant and the school staff, dated between March 8, 2013 and March 22, 2013;
- bb. Correspondence from the AACPS school system staff to the complainant, dated April 16 and 17, 2013;
- cc. E-mail correspondence between the complainant and the school staff, dated between April 18, 2013 and April 30, 2013;

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- dd. E-mail correspondence between the complainant and the school staff, dated between May 1, 2013 and May 30, 2013;
- ee. Correspondence from the AACPS school system staff to the complainant, dated May 3, 2013;
- ff. Anne Arundel Gastroenterology Associates *Encounter Note*, dated May 9, 2013;
- gg. AACPS *Records Release Authorization* form, dated May 12, 2013;
- hh. Correspondence from XXXXXXXXXXXXX Family Center to school staff, dated May 17, 2013;
- ii. XXXXXXXXXXXX *Discharge Summary*, dated May 17, 2013;
- jj. Student's attendance data for the 2012-2013 school year;
- kk. IEP progress reports for the 2012-2013 school year;
- ll. Behavior charts, dated between January 2013 and the end of the 2012-2013 school year; and
- mm. School Psychologist service provider log from the 2012-2013 school year.

### **BACKGROUND:**

The student is fifteen (15) years old, was identified as a student with an Emotional Disability under the IDEA on August 22, 2012, and has an IEP that requires that she be provided with special education instruction and related services. Prior to August 22, 2012, the student was identified as a student with a disability under Section 504 of the Rehabilitation Act of 1974 based on diagnoses of XXXXXXXXXXXX, Attention Deficit/Hyperactivity Disorder (ADHD), and Generalized Anxiety Disorder, and had a 504 Accommodations Plan.

The student has attended XXXXXXXXXXXX (XXXXXXXXXX) since the start of the 2012-2013 school year. During the 2011-2012 school year, she attended XXXXXXXXXXXXXXXXXXXX. 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, l, m, o, p, u).

### **FINDINGS OF FACTS:**

#### **IDEA Evaluation**

1. On August 22, 2012, the IEP team completed an initial evaluation that began on July 25, 2012. The IEP team reviewed the results of a psychological assessment, which indicate that the student exhibits anxiety that manifests as excessive worry, nervousness, and difficulty relaxing. The student also experiences a depressed mood, feelings of being unsuccessful, and feelings of being unable to achieve her goals. The student experiences difficulty adjusting to change, and experiences challenges with expressing herself and communicating in a clear manner. The student can be argumentative, noncompliant with adult requests, and has difficulty developing and maintaining friendships. The report of the

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assessment results states that the student's "challenges in these areas seriously affect her academic performance, social function, and home life" (Docs. l-o).

2. The results of the assessment also indicate that the student has difficulty organizing her school work and completing tasks, especially homework. She has a low level of frustration tolerance and often gives up easily on school work when presented with a difficult task. The report notes that the student stated that she is "experiencing intense anxiety surrounding her return to school" (Doc. n).
3. The assessment report included recommendations that the student be provided with:
  - a. School-based counseling services to assist her in coping with the "significant amount of anxiety and stress related to a regular school routine" and her "difficulty regulating her emotions and behaviors, which negatively affects her ability to benefit from instruction;"
  - b. A "reinforcement-based program" to encourage her to engage in the school process and complete instructional tasks;
  - c. A "crisis" or "time out" pass to be used to request emotional and behavioral support from school counseling and student support staff; and
  - d. Frequent feedback from her teachers about her performance in the classroom (Doc. n).
4. As part of the evaluation, the team considered the following additional information as well:
  - a. Information that during the 2011-2012 school year, the student had a Section 504 Accommodations Plan that addressed difficulties with work completion, organization, maintaining attention, and social skills;
  - b. Information that from January 27, 2012 until the end of the 2011-2012 school year, the student received Home and Hospital Teaching services as a result of verification from her private psychiatrist that states that she was "experiencing an acute emotional disturbance including severe depression and auditory and visual hallucinations, brought on by the persistent overwhelming stress of the [school] environment;"
  - c. The report of the results of a private neuropsychological evaluation obtained by the complainant, dated January 25, 2012, stating that the student's performance during cognitive testing was "significantly lower in all areas" than when tested in 2008 and that "her psychiatric difficulties may be impacting her ability to use her

intellect to solve problems effectively.” The report states that socially and emotionally, the student is “experiencing significant emotional distress” and “possibly psychotic symptoms.” It also indicates that the student has difficulty with inhibiting impulses, shifting attention, controlling emotions, initiating activities, sustaining working memory, planning and organizing approaches to problem solving, organizing materials, and monitoring actions;

- d. Information from the student that she feels that she is “bullied” by other students and that she is having difficulty maintaining attention and completing class work. The student also expressed her belief that she needs to have a “stress pass” that would enable her to seek adult support when needed.
  - e. Information from the complainant that the student has great difficulty completing homework and she requested that the student not be required to complete homework, which was causing her an “enormous amount of stress” (Docs. b-j, l, and m).
5. Based on the evaluative data, the team determined that the student is a student with an Emotional Disability under the IDEA and developed the IEP (Docs. o and p).

#### **IEP in Effect during the 2012-2013 School Year**

6. At the August 22, 2012 meeting, the team identified social/emotional skills, “requisite learning” skills, and transition as areas of need arising from her emotional disability and developed annual goals to address these areas (Doc. p).
7. The team developed an annual goal related to “requisite learning skills” that states that the student “will improve requisite learning skills so she is organized and prepared/available for instruction.” The goal includes the following short-term objectives:
- a. The student will maintain the designated organizational system in all her academic classes;
  - b. The student will complete class work on a consistent basis;
  - c. The student will demonstrate focus and engagement consistent with classroom expectations in order to complete assessed tasks with accuracy; and
  - d. The student will self-advocate for and accept academic assistance and attend extra help sessions provided by teachers (Doc. p).

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8. The meeting notes document that during the development of this goal the complainant expressed her concern about the student's ability to complete homework due to her anxiety and requested that the student not be provided with homework. The team determined that "the agreed upon focus will be the completion of classwork," and added the short-term objective related to accepting academic assistance and attending extra help sessions provided by teachers to address work completion (Docs. o and p).
9. The team developed an annual goal related to the student's social and emotional functioning that states that the student "will manage affect, mood, and behavior to remain motivated and actively engaged during academic activities." The goal includes the following short-term objectives:
  - a. The student will develop attitudes and thoughts associated with motivation and engagement for instructional activities;
  - b. The student will persist with difficult and/or non-preferred academic tasks even when she experiences stress, boredom, or discouragement;
  - c. The student will utilize relaxation and coping skills if she experiences emotional distress during instructional activities; and
  - d. The student will advocate for herself and notify an adult if she has made attempts to use coping skills and needs additional support to remain engaged and motivated at school (Doc. p).
10. The team developed another annual goal related to the student's social and emotional functioning that states that the student "will use prosocial skills to develop and maintain positive relationships with peers and adults." The goal includes the following short-term objectives:
  - a. The student will use prosocial skills (verbal and nonverbal) to initiate and reciprocate social interactions with peers in a socially appropriate manner;
  - b. The student will use prosocial skills (*i.e.*, social problem solving) to resolve conflicts with peers and peer rejection in a socially appropriate manner, including the use of self-advocacy and assertiveness skills;
  - c. The student will contribute to small group discussion, work well with others during academic tasks, and participate in school related social activities and/or clubs; and
  - d. The student will obtain adult assistance, when needed, to resolve conflicts with peers (Doc. p).



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11. The team determined that the complainant would be provided with written reports of the student's progress toward achieving the annual IEP goals on a quarterly basis (Doc. p).
12. In order to assist the student with achieving the annual goals, the IEP team determined that the student requires special education instruction to address the "requisite learning" goal and counseling as a related service to address the annual goals related to the student's social, emotional, and behavioral functioning (Doc. p).
13. The team determined that the Least Restrictive Environment (LRE) in which the student's IEP can be implemented with the provision of supports is the general education classroom (Doc. p).
14. The team determined that the supports to be provided on a daily basis in the general education classroom include:
  - a. Use of calculation devices;
  - b. Provision of extended time to complete assignments;
  - c. Provision of frequent breaks;
  - d. Reducing distractions to the student;
  - e. Providing frequent feedback;
  - f. Checking for understanding;
  - g. Providing the student with "assistance with organization;"
  - h. Providing a set of textbooks and materials for the student to keep at home;
  - i. Allowing the student to keep all notebooks in a designated area;
  - j. Breaking down the student's assignments into smaller units;
  - k. Encouraging and reinforcing appropriate behavior in academic and non-academic settings;
  - l. Monitoring the use of an agenda book and/or a "progress report;"
  - m. Provision of manipulatives and/or "sensory activities" to promote listening and focusing skills;

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- n. Providing of “adult support;” and
  - o. Preferential seating (Doc. p).
15. The team determined that an electronic system of home-school communication would be provided periodically but did not document that the communication would occur with a specific frequency (Doc. p).
16. The team clarified how some of the supports would be provided:
- a. “Assistance with organization” would be provided through a daily “check-in” and “check-out” procedure where the student would report to the Special Education Office at the beginning of the day to pick up her materials and prepare for the day. She would then meet with an adult at the end of the day “to debrief;” and
  - b. “Adult support” would be provided through staff assigned to work exclusively with the student and accompany her to all classes. The team also documented that the staff member would “carry a documentation log” (Doc. o).

**First (1<sup>st</sup>) Quarter of the 2012-2013 School Year – August 27, 2012 – November 7, 2012**

17. There is documentation that during the first quarter of the 2012-2013 school year, the student refused her supports; did not complete homework, classwork, or assignments missed due to absences; did not ask for or accept assistance in completing assignments; did not follow through with commitments she made to her teachers and her parents regarding completing missing work, and refused to come to school on several dates (Docs. q, r, t, jj, and mm).
18. During the first quarter of the 2012-2013 school year, the student began to demonstrate at home the types of behavior and experience the levels of stress that she had demonstrated the previous school year when she was unable to attend school due to an emotional condition. The student’s step-father informed school staff that the stress stemmed from the amount of school work that the student was expected to complete and expressed fear that “another breakdown will be unavoidable” if the stress level was not significantly reduced (Doc. r).
19. During the first quarter of the 2012-2013 school year, on at least six (6) occasions, the student’s parents requested clarification of the requirements of the IEP with respect to how the “adult support,” “assistance with organization,” and home/school communication provisions were to be provided (Docs. r and s).

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20. On September 20, 2012,<sup>1</sup> there is documentation that a “parent-teacher conference” was conducted in order for school staff to share with parents their understanding of the IEP requirements (Doc. r).
21. IEP progress reports, dated November 7, 2012, document that the student was making sufficient progress to meet the goals. However, the progress reports also state that the student’s “performance in the classroom has been inconsistent . . . teachers reported that [the student] often required redirection to attempt and persist with difficult or non-preferred tasks. [The student] also demonstrated a tendency to avoid working by drawing or talking with peers. The greatest concern for [the student] was related to completing assignments and attendance. Teachers reported that [the student] participated and completed assignments during the school day. However, she did not consistently complete homework/out of class assignments” (Doc. kk).
22. There is no documentation that the progress reports were provided to the complainant (Doc. kk and review of educational record).

#### **November 8, 2012 IEP Team Meeting**

23. On November 8, 2012, the IEP team convened at the request of the complainant and the student’s step-father to address their continued concerns about how “adult support” was being provided and the lack of information they received from school staff about the student’s completion of work. The documentation of the meeting indicates that the team considered the following data:
  - a. Information from school staff about the manner in which “adult support” was being provided;
  - b. Information from the student’s teachers that the student “is not actively engaged,” “does not turn in all assignments,” and “is aware of her duties and has yet to stay after for additional help;”
  - c. Information from the complainant that six (6) of the student’s absences during the first (1<sup>st</sup>) quarter of the 2012-2013 school year were “due to depression” and that “she was unable to get out of bed and come to school;” and
  - d. A request from the student’s attorney that the annual goal related to “requisite learning skills” be revised to address the student’s lack of progress (Docs. u and v).

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<sup>1</sup> The documentation indicates that the purpose of the “parent-teacher conference” was to “go over exactly what is on the IEP.” As a result of the conference, school staff agreed to develop an “incentive plan” for the student to complete homework and attend school and an “intervention plan.” There is no clarification regarding the “intervention plan” (Docs. r and s).

24. After considering the information, the team:
  - a. Determined that the student would stay after school on Tuesdays and Thursdays in order to complete missing work and that the staff member providing “adult support” would escort the student to “Homework Harbor” or a designated teacher; and
  - b. Agreed to “communicate on a bi-weekly basis with the parents regarding any missing assignments and if [the student] stayed after” school to complete work (Docs. u and v).
25. There is no documentation that the IEP team considered positive behavioral supports to address the interfering behaviors reported by school staff and the complainant or revised the IEP to reflect the decisions made at the meeting (Docs. u and v).

**Second (2<sup>nd</sup>) Quarter of the 2012-2013 School Year – November 8, 2012 – January 25, 2013**

26. During the second (2<sup>nd</sup>) quarter of the 2012-2013 school year, the student was absent from school for twenty-nine (29) school days. There is documentation that the complainant informed school staff that the student was experiencing nausea, acid-reflux symptoms, extreme fatigue, and vomiting as a result of school-related anxiety and that the student’s doctor was recommending “that in order to get [the student] back in to school, she meet with a tutor one-on-one rather than actually go into the classroom” (Docs. w, x, and jj).
27. School staff informed the complainant that the information she provided “does not directly address the IEP” and referred the matter to the student’s guidance counselor (Doc. w and interview with school staff).
28. The student’s parents continued to request clarification from school staff about the requirements of the IEP during the second (2<sup>nd</sup>) quarter of the 2012-2013 school year, but there is no documentation that an IEP team was convened to ensure that the IEP included a statement of the required services that was clear to both the teachers and parents (Docs. w and y).
29. IEP progress reports, dated January 25, 2013, were left incomplete by school staff and contain statements from school staff that “it is difficult to assess how well [the student] achieved her goal, due to her frequent absences during this 9-week grading period. She was absent on a consistent basis” (Doc. kk).

**Third (3<sup>rd</sup>) Quarter of the 2012-2013 School Year – January 26, 2013 – April 12, 2013**

30. During the third (3<sup>rd</sup>) quarter of the 2012-2013 school year, there is documentation that the student continued to be absent or late from school due to reported anxiety, vomiting, and school-related stress, continued to refuse the supports offered to her, to complete work, or to follow through with commitments she had made to her teachers and parents regarding completing missed assignments (Docs. z-bb, jj, ll, and mm).
31. The student's parents continued to request clarification from school staff about the manner in which IEP services were to be provided during the third (3<sup>rd</sup>) quarter of the 2012-2013 school year, but there is no documentation that the IEP team was convened to ensure that the IEP included a statement of the required services that was clear to the teachers and parents (Docs. z and aa).
32. IEP progress reports, dated April 12, 2013, document that the student was not making progress toward achieving the annual goals related to "requisite learning skills" and social and emotional functioning (Doc. kk).
33. There is no documentation that the IEP progress reports were provided to the complainant or that the IEP team was convened to address the lack of expected progress (Doc. kk and review of educational record).

**Fourth (4<sup>th</sup>) Quarter of the 2012-2013 School Year – April 13, 2013 – June 13, 2013**

34. During the fourth (4<sup>th</sup>) quarter of the 2012-2013 school year, there is documentation that the student continued to be absent or late from school due to reported anxiety, vomiting, and school-related stress, continued to refuse the supports offered to her, to complete work, or to follow through with commitments she had made to her teachers and parents regarding completing missed assignments (Docs. cc-ee, jj, ll, and mm).
35. The student's parents continued to request clarification from school staff about the manner in which IEP services were to be provided during the fourth (4<sup>th</sup>) quarter of the 2012-2013 school year. Although the complainant requested an IEP team meeting, there is no documentation that the IEP team was convened (Docs. cc and dd).
36. IEP progress reports, dated June 13, 2013 indicate that the student was once again making sufficient progress to achieve the annual goals developed on August 22, 2012. However, the student, who was determined not to require Extended School Year services, had not achieved the goals that were to be mastered during the 2012-2013 school year (Doc. kk).
37. There is no documentation that the the IEP progress reports were provided to the complainant (Doc. kk and review of educational record).

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38. There is documentation that in May 2013, school staff received information about the student's medical needs from the student's physician and psychiatrist. An IEP team meeting was scheduled for June 5, 2013, to consider this updated information, but was rescheduled by school staff to August 13, 2013 (Docs. ff-ii and interview with both parties).

## **LEGAL REQUIREMENTS:**

### **IEP Development**

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. There is no requirement that the interfering behaviors arise out of the student's disability in order to be addressed (34 CFR §300.324).

The IEP must include 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 parents (34 CFR §300.320).

### **IEP Review and Revision**

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).

The public agency or the parent may request that an IEP team meeting be convened at any time to review a student's program, determine the appropriate services, and discuss the provision of services. If the parent requests a meeting, the public agency must either convene an IEP team meeting or provide the parent with written notice, within a reasonable time, to explain why the agency has determined that conducting the meeting is not necessary to ensure the provision of Free Appropriate Public Education (FAPE) (34 CFR §§300.324 and 503).

The United States Department of Education, Office of Special Education Programs (OSEP), requires that, during the investigation of an allegation that a student has not been provided with an appropriate educational program under the IDEA, the State Educational Agency (SEA) must review the procedures used by a school system to reach determinations about the program. Additionally, the

SEA must review the evaluative data to determine if decisions made by the IEP team are consistent with the data (OSEP Letter #00-20, July 17, 2000 and *Analysis of Comments and Changes to IDEA*, Federal Register, Vol. 71, No. 156, p. 46601, August 14, 2006).

### **IEP Implementation**

The public agency must obtain informed consent from the student's parent for the initial provision of special education and related services to the student. If the parent refuses to consent to the initial provision of special education and related services, the public agency is not considered to be in violation of the requirement to make a FAPE available to the student for failing to provide the student with special education and related services (34 CFR §300.300 and COMAR 13A.05.01.13(B)).

If written consent to the initiation of special education services is provided by the parent, 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). In order to ensure that the student receives the services required, the IEP must be written in a manner that is clear to all who are involved in its development and implementation (*Analysis of Comments and Changes*, Federal Register, Vol. 64, No. 48, p.12479, March 1999).<sup>2</sup>

### **DISCUSSION/CONCLUSIONS:**

#### **Allegation #1: IEP that Addresses the Student's Social, Emotional, and Behavioral Needs since the Start of the 2012-2013 School Year**

Based on the Findings of Facts #1-#16, the MSDE finds that when developing the IEP, the team considered the evaluation data and the complainant's concerns and developed an educational program to address the student's needs, consistent with the data. Therefore, the MSDE does not find a violation with respect to the development of the IEP.

However, based on the Findings of Facts #17-#38, the MSDE finds that school staff's refusal to convene an IEP team meeting to consider supports to address the student's interfering behaviors is not consistent with the data that these behaviors arise out of the student's disability. Based on those same Findings of Facts, the MSDE also finds that school staff did not provide the complainant with prior written notice of the refusal to consider such supports. Based on those same Findings of Facts, the MSDE further finds that school staff did not ensure that the IEP was reviewed and revised to address the lack of expected progress since the second (2<sup>nd</sup>) quarter of the 2012-2013 school year. Therefore, the MSDE finds a violation regarding this allegation since the second (2<sup>nd</sup>) quarter of the 2012-2013 school year.

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<sup>2</sup> In the 2004 reauthorization of the IDEA, no changes were made to this requirement.

**Allegation #2: IEP Implementation during the 2012-2013 School Year**

Based on the Findings of Facts #6-#16, #17, #23, #30, and #34, the MSDE finds that there is documentation that services and supports were being made available to the student, but that she refused to accept them. However, based on the Findings of Facts #19, #20, #23, #25, #28, #31, and #35, the MSDE finds that the AACPS has not ensured that the IEP has been written clearly with respect to the services and supports required, thus has not made sure that the services and supports offered are consistent with the IEP team's decisions. Therefore, the MSDE finds a violation regarding this allegation.

**Allegation #3: Provision of Quarterly Progress Reports during the 2012-2013 School Year**

Based on the Findings of Facts #11, #21, #22, #29, #32, #33, #36, and #37, the MSDE finds that there is no documentation that the complainant was provided with the reports of the student's progress toward achieving the annual IEP goals during the 2012-2013 school year as required by the IEP. Therefore, the MSDE finds a violation regarding the allegation.

**CORRECTIVE ACTIONS/TIMELINES:**

**Student-Specific**

The MSDE requires the AACPS to provide documentation by the start of the 2013-2014 school year that the complainant has been provided with the reports of the student's progress toward achieving the annual goals.

In addition, the MSDE requires the AACPS to provide documentation by September 30, 2013, that the IEP team considers positive behavioral interventions to address the student's interfering behaviors and revised the IEP to address the lack of achievement of the annual goals and to ensure that it is written clearly with respect to the special education services required. The IEP team must also determine the amount and nature of *compensatory services*<sup>3</sup> or other remedy necessary to redress the violations identified in the Letter of Findings.

The AACPS 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 IDEA.

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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).



### **School-Based**

The MSDE requires the AACPS to provide documentation by October 31, 2013, 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 OSEP. Additionally, the findings in the Letter of Findings will be shared with the MSDE's Office of Monitoring and Accountability for its consideration during present or future monitoring of the AACPS.

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 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 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. 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

XXX

Ms. Mary Tillar

July 9, 2013

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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 : Kevin Maxwell  
Alison Steinfelds  
XXXXXXX  
Martha J. Arthur  
Dori Wilson  
Anita Mandis  
Kathy Stump