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RE: XXXXX
Reference: #11-023

Dear Parties:

The Maryland State Department of Education, Division of Special Education/Early Intervention Services (MSDE), has completed the investigation of the complaint regarding special education services for the above-referenced student. There is a sixty (60) day timeline for completion of the complaint investigation process. During the course of the investigation, this office determined that due to the number of public agencies involved, it was necessary to extend the timeline for completion of this Letter of Findings (LOF) in order to obtain the needed information to complete the investigation, pursuant to 34 CFR §300.152. This correspondence is the report of the final results of the investigation.

ALLEGATIONS:

On September 30, 2010, MSDE received a complaint from Cynthia Fennimore, Esq., Legal Aid Bureau, Janet F. Hartge, Esq., Legal Aid Bureau, and Leslie Seid Margolis, Esq., Maryland Disability Law Center (MDLC) hereafter, "the complainants,"¹ on behalf of the above-referenced student. In that correspondence, the complainants alleged that the Allegany County Public Schools (ACPS), the Baltimore County Public Schools (BCPS), the Garrett County Public Schools (GCPS), and the Washington County Public Schools (WCPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) and related federal and State regulations with respect to the above-referenced student.

MSDE investigated the following allegations:

1. ACPS and GCPS did not follow proper procedures for determining whether the student's IEP could be implemented in a Type III educational program, in accordance with COMAR 13A.09.10.20;
2. ACPS and GCPS did not ensure that the Individualized Education Program (IEP) team meeting held in September 2009² included the proper participants, in accordance with 34 CFR §300.321;
3. ACPS and GCPS have not followed proper procedures when determining that the student will participate in an alternate assessment instead of participating in the regular Statewide assessment since September 2009,² as required by 34 CFR §300.320, COMAR 13A.05.01.09, and the Maryland Accommodations Manual;
4. ACPS and GCPS have not ensured that the student participated in alternate Statewide assessments since September 2009² in accordance with 34 CFR §300.320 and COMAR 13A.05.01.09;
5. ACPS and GCPS have not ensured that the student's IEP addresses his academic and behavioral needs since September 2009² in accordance with 34 CFR §§300.320 and .324;
6. BCPS has not ensured that the student's IEP addresses his academic and behavioral needs since July 2010, in accordance with 34 CFR §§300.320 and .324;
7. ACPS and GCPS have not ensured that the IEP team convened to address the lack of expected progress toward achieving the annual IEP goals since September 2009, in accordance with 34 CFR §300.324;

¹ This office received written consent from the student's mother to release the results of this investigation to the Legal Aid Bureau, but it did not receive written consent from her to release the results of the investigation to MDLC.

² The complaint alleges violations dating back to January 2009. However, the complainants were informed in writing on October 8, 2010, that this office only has authority to investigate allegations of violations of IDEA that occurred not more than one (1) year prior to the date that the complaint is received, in accordance with 34 CFR §300.153.

8. BCPS has not ensured that the IEP team convened to address the lack of expected progress toward achieving the annual IEP goals since July 2010, in accordance with 34 CFR §300.324;
9. ACPS and GCPS have not ensured that the student has been provided with the amount of special education instruction and related services in the educational placement required by the IEP since September 2009,² in accordance with 34 CFR §§300.101 and .323;
10. WCPS did not ensure that the student was provided with special education services during the period of hospitalization at XXXXXX from June 10, 2010 until July 8, 2010, in accordance with 34 CFR §§300.101 and .323; and
11. BCPS has not ensured that the student was provided with the amount of special education instruction and related services in the educational placement required by the IEP since July 2010, in accordance with 34 CFR §§300.101 and .323.

INVESTIGATIVE PROCEDURES:

1. Ms. Kathy Stump, Education Program Specialist, MSDE, was assigned to investigate the complaint.
2. On October 1, 2010, MSDE sent a copy of the complaint, via facsimile, to Ms. Sheree Witt, Executive Director of Special Education & Student Services, ACPS; and Ms. Jennifer Kotulak, Supervisor of Special Education, GCPS.
3. On October 5, 2010, Ms. Stump spoke with Ms. Fennimore by telephone and clarified the allegations to be investigated. On the same date, Ms. Anita Mandis, Section Chief, Complaint Investigation Section, Complaint Investigation and Due Process Branch, MSDE, spoke with Ms. Witt regarding the allegations in the complaint.
4. On October 8, 2010, MSDE sent correspondence to the complainants that acknowledged receipt of the complaint and identified the allegations regarding the ACPS and the GCPS subject to this investigation. On the same date, MSDE notified Ms. Witt and Ms. Kotulak of the allegations and requested that their offices review the alleged violations.
5. On October 21, 2010, Ms. Mandis and Mrs. Martha J. Arthur, Education Program Specialist, MSDE, conducted a review of the student's education record at XXXXXXXX and interviewed Mr. XXXXXXXXXXXX, Executive Director, XXXXXXXXXXXX and Ms. XXXXXXXXXXXX, Education Director, XXXXXXXXXXXX. Ms. Kotulak and Ms. Jeri Jones, Pupil Personnel Worker, GCPS, attended the visit as representatives of GCPS and to provide information about GCPS policies and procedures, as needed.
6. On November 3, 2010, Ms. Stump conducted a review of the student's education record at XXXXXXXXXXXXXXXX.

7. On November 4, 2010, Ms. Stump, Ms. Mandis, and Mrs. Arthur conducted a review of the student's education record at the offices of Rochelle Eisenberg, Esq., counsel for ACPS. During this review, Ms. Stump, Ms. Mandis, and Mrs. Arthur also spoke with Mr. Bud Cockrum, Nonpublic Specialist, ACPS, via telephone conference regarding the allegations in the complaint.
8. On November 5, 2010, MSDE sent a copy of the complaint, via facsimile to Ms. Sharon Floyd, Supervisor of Compliance, BCPS; and Mr. Jeffrey Gladhill, Director of Special Education, WCPS.
9. On November 8, 2010, MSDE sent correspondence to the complainants informing them that the BCPS and the WCPS were being included as parties to the investigation. The MSDE also notified Ms. Kalisha Miller, Director of Special Education, BCPS; and Mr. Gladhill of the allegations to be investigated and requested that their offices review the alleged violations.
10. On November 15, 2010, Ms. Mandis conducted a telephone interview with Ms. Marjorie Gray, Supervisor, Case Management and Compliance, WCPS, regarding the allegations in the complaint. On the same date, MSDE sent a copy of the complaint, via facsimile, to Ms. Gray.
11. On November 16, 2010, Ms. Mandis conducted a telephone interview with Mr. Gladhill regarding the allegations in the complaint.
12. On November 22, 2010, Ms. Stump conducted a telephone interview with Ms. Floyd regarding the allegations in the complaint.
13. On November 23, 2010, MSDE made a report via telephone, facsimile, and United States mail, to the Baltimore County Department of Social Services (BCDSS) that there is no person in the State of Maryland who is responsible for the care of the student. On the same date, Ms. Mandis and Ms. Dori Wilson, Branch Chief, Complaint Investigation and Due Process Branch, MSDE, spoke with Ms. Janet Anders, Supervisor, Child Protective Services Screening Unit, BCDSS, by telephone to clarify the report.
14. On December 1, 2010, Ms. Mandis spoke with Ms. Jane Garring, Coordinator for Child Protective Services Investigation, BCDSS, by telephone to further clarify the report.
15. On that same date, Dr. Jodi King, Section Chief, Nonpublic Special Education Section, Family Services and Interagency Branch, MSDE, spoke with Ms. Nancy Feely, Supervisor, Nonpublic Schools, BCPS, regarding MSDE's request that BCPS assume service provider responsibility for the student.
16. MSDE reviewed documentation, relevant to the findings and conclusions referenced in this LOF, which includes:
 - a. Correspondence and attachments from the complainants to MSDE, received on September 30, 2010;

- b. Order of the Circuit Court for Allegany County, dated July 20, 2009;
- c. Correspondence from XXXXXXXXX to GCPS personnel, dated August 31, 2009;
- d. Telephone contact log from the XXXXXXXXX, dated between August 2009 and September 2009;
- e. IEP, dated September 25, 2009;
- f. IEP team meeting summary, dated March 2, 2010;
- g. Invitation to an IEP team meeting for April 27, 2010;
- h. IEP, dated April 27, 2010;
- i. *Discharge Summary* from XXXXXXXXXXXX, dated May 7, 2010;
- j. IEP and meeting summary, dated May 10, 2010;
- k. Student's attendance data from XXXXXXXXX for the 2009-2010 school year;
- l. Student's class schedule from XXXXXXXXX for the 2009-2010 school year;
- m. IEP progress reports for the 2009-2010 school year;
- n. ACPS contact log from the 2009-2010 school year;
- o. IEP, dated June 3, 2010;
- p. Functional Behavior Assessment, dated June 9, 2010;
- q. Behavioral Intervention Plan, dated June 9, 2010;
- r. Psychiatric Evaluation report and Admission Note from XXXXXXXXX, dated June 10, 2010;
- s. Occupational Therapy service provider log from ACPS, dated between September 2009 and June 2010;
- t. Physical Therapy service provider log from ACPS, dated between September 2009 and June 2010;
- u. Correspondence from XXXXXXXXXXXXX to ACPS, dated July 8, 2010;
- v. *ACPS Informed Consent for Assessment*, dated August 22, 2010;
- w. Functional Behavioral Assessment, dated August 26, 2010;
- x. Behavior Intervention Plan, dated August 26, 2010;
- y. Order from the Circuit Court for Allegany County, dated August 31, 2010;
- z. Invitation to an IEP team meeting on September 23, 2010;
- aa. IEP and meeting summary, dated September 23, 2010;
- bb. Correspondence from ACPS to XXXXXXXXXXXXX, dated October 13, 2010;
- cc. Correspondence from Allegany County Department of Social Services to ACPS personnel, dated October 15, 2010; and
- dd. Student's attendance from XXXXXXXXXXXXX for the 2010-2011 school year;
- ee. Monthly Progress Notes and Teacher progress reports from XXXXXXXXXXXXX, dated August 10, 2010, September 20, 2010, and October 15, 2010;
- ff. Social Worker Progress report from XXXXX School;
- gg. Occupational Therapy Progress Reports from XXXXXXXXXXXXX;
- hh. Physical Therapy service provider log from XXXXXXXXXXXXX; and
- ii. *ACPS Amendment/Modification to Current IEP without an IEP Team Meeting form*, dated June 11, 2010.

BACKGROUND:

The student is eleven (11) years old. He is identified as a student with multiple disabilities under IDEA (intellectual disability and other health impairment related to a diagnosis of Attention Deficit/Hyperactivity Disorder) and receives special education instruction and related services.

On January 23, 2009, the student XXXXXXXXXXXX, but he remained in the custody of his mother. On August 5, 2009, the student was committed to the custody of the Allegany County Department of Social Services (ACDSS). On May 7, 2010, ACDSS returned custody of the student to his mother. On August 31, 2010, the Circuit Court for Allegany County dismissed the XXXXX case (Doc. cc).

During the period covered by this investigation, the student was in the following residential and educational placements:

September 2009² until May 7, 2010

- The student was placed by ACDSS in XXXXXXXXXXXXXXXXXXXXXXXXXXXX, XXX, a XXXXXXXX located in XXXXXXXX (XXXXXXX).
- During this period, the student attended the XXXXXXXXXXXX, a nonpublic Type III transitional school³ operated by the XXXXXXXX.

May 7, 2010 until June 9, 2010⁴

- ACDSS returned the student to the legal custody of his mother.
- During this period, ACPS placed the student at the XXXXXXXXXXXX at XXXXXXXX, a nonpublic Type I separate special education school³ located in XXXXXXXX.

June 10, 2010 until July 7, 2010⁴

- The student was hospitalized by his mother at XXXXXXXXXXXX, a psychiatric hospital located in XXXXXXXXXXXX, XXXXX.
- During this period, the student did not receive educational services.

July 8, 2010 until October 1, 2010

- The student was referred to the XXXXXXXXXXXX Local Coordinating Council (LCC) for residential placement. According to a letter from XXXXXXXX to XXXXXXXX, "the placement was made by his mother through Core Services," which is part of the XXXXXXXX County Health Department. The LCC approved the placement and the student moved to the

³ Nonpublic schools that have Type I programs can provide general education services, special education services, or both. Nonpublic schools that have Type II programs provide special education services on the grounds of a public school. Nonpublic schools that have Type III programs provide general education services only, unless the IEP team determines that the Type III program can implement the student's IEP (COMAR 13A.09.10).

⁴ These dates are a close approximation but may not be exact because of a discrepancy among the documents.

XXXXXXXXXXXXXXXXXXXX (XXXXXXXX) (Doc. cc). The XXXXXXX Health Department agreed to fund the student's residential placement.

- During this period, ACPS agreed to fund the student's educational placement and placed the student at the XXXXXXXXXXX, a nonpublic full day and residential special education school, located on the grounds of the XXXXXXXXXXX, in Baltimore County, Maryland.

Since October 1, 2010

- ACPS discontinued payment for the student's education program when they learned that his mother had moved to XXXXXXX.
- The XXXXXXX education and mental health agencies have been notified that the student's mother now resides in XXXXXXX and that, although she retains custody, the student remains in the XXXXXXX in Maryland. The XXXXXXX education agency has not yet assumed responsibility for the provision of education services for the student.
- MSDE has assumed financial responsibility for the student's education placement until the matter is resolved. At MSDE's request, BCPS has agreed to ensure the provision of FAPE to the student at no cost to the school system because the XXXXXXX and the XXXXXXX are located within its jurisdiction.
- While the student remains at the XXXXXXX, it has not yet been determined whether the residential placement will continue to be publicly funded. MSDE staff have notified BCDSS of concerns that the student remains in Maryland without either an adult or Maryland public agency responsible for his care and custody (Docs. a, b, c, i, k, n, r, u, y, aa, bb, cc, dd, review of education record, and review of LCC referral).

PRELIMINARY DISCUSSION:

JURISDICTIONAL RESPONSIBILITY FOR PROVIDING A FREE APPROPRIATE PUBLIC EDUCATION (FAPE) TO THE STUDENT

Legal Requirements

Placement of Students in Type III Educational Programs by State Agencies

Maryland Law permits the implementation of a student's IEP in a Type III general education program for residents of a facility licensed by a unit of State government to provide treatment or care of students under certain circumstances. The student's IEP may be implemented through a transitional instructional program (COMAR 13A.09.10.20). The Local School System (LSS) where the Type III facility is located is the school system responsible for providing special education and related services to the student (COMAR 13A.05.02.13).

In this case, on July 20, 2009, the Circuit Court for Allegany County committed the student to the custody of the ACDSS. The ACDSS placed the student in the XXXXXXXXXXXX and enrolled him in a Type III program at the XXXXXXXXXXXX, which is located in XXXXXXXX, Maryland (Docs. b, c, d, and k). Therefore, during the period between September 2009² and May 7, 2010, the GCPS was responsible for providing FAPE to the student.

Placement of Students in a Type I Nonpublic School by the LSS

FAPE must be available to all students residing in the State (34 CFR §300.101). A LSS shall ensure that all students with disabilities residing within its jurisdiction are located, identified, evaluated, and provided services (COMAR 13A.05.02.13). Each child shall attend a public school in the county where the child is domiciled with the child's parent, guardian, or relative providing informal kinship care (Md. Code Ann., Educ. §7-101 (2008)). If a student's IEP cannot be implemented in a public school program, the LSS in which the student's parent resides shall take steps to ensure that FAPE is provided to the student (COMAR 13A.05.01.16).

In this case, on May 8, 2010, the ACDSS placed the student in the physical custody of his mother and the ACPS placed him in the XXXXXXXXXXXX at XXXXXXXX, a nonpublic separate special education school, which is located in XXXXXXXX, Maryland (Docs. g, h, i, and j). Therefore, during the period between May 8, 2010 and June 9, 2010, the ACPS was responsible for providing FAPE to the student.

Placement of Students in a Hospital

When a student with a disability is unable to participate in his school of enrollment due to a physical or emotional condition, the LSS shall make instructional services available to the student during convalescence or treatment time in a medical institution or a therapeutic treatment center (COMAR 13A.03.05.03). In this case, the student's mother continued to reside in Allegany County, Maryland between June 10, 2010 and July 7, 2010, when the student was in the hospital in Washington County, Maryland (Doc. r). Therefore, the ACPS remained responsible for providing FAPE for the student during his hospitalization.

Placement of Students in a Residential Treatment Center by the LCC

The LCC is an interagency committee established in each local subdivision within the State for the purpose of developing and implementing plans of care for the residential placement, or alternatives to residential placement, of children with special needs (COMAR 14.31.01.02). Specifically, the LCC is responsible for identifying interagency resources to assist students with special needs, facilitating the provision of interagency services to students with disabilities, and reviewing requests for State funding of residential placements of students with disabilities (COMAR 13A.05.02.03). If the LCC determines that a student with a disability requires placement in a nonpublic setting for reasons that do not pertain to his education, the LSS responsible for the student's education may, but is not required to agree to be responsible for the education cost (13A.05.02.14).

In this case, while the student was hospitalized at XXXXXXXXXXXX, a referral was made to the Allegany County LCC. The Allegany County LCC approved the student's placement, which

was made by the student's mother through and funded by the Allegany Health Department, in the XXXXXXXXXXXX. The ACPS agreed to be financially responsible for the student's education at the nonpublic special education school on the grounds of the XXXXXXXXXXXX (Docs. u, bb, cc, and review of LCC referral). Therefore, ACPS assumed responsibility for providing FAPE to the student at the XXX while the student's mother remained a resident of Allegany County, Maryland.

**ALLEGATION #1: DETERMINING WHETHER THE STUDENT'S IEP
COULD BE IMPLEMENTED IN A TYPE III PROGRAM**

Findings of Fact:

GCPS

1. There is documentation that on August 5, 2009, the ACDSS placed the student in the XXXXXXXXXXXX. There is documentation that the XXXXXXXX staff notified GCPS of the student's enrollment in the XXXXXXXXXXXX and that XXXXXXXX staff requested that an IEP team meeting be convened (Docs. c, d, and n).
2. On August 31, 2009, XXXXXXXX staff and GCPS staff determined that the student's IEP could be implemented at XXXXXXXX without convening an IEP team meeting and without reviewing the IEP (Doc. c).

ACPS

3. On September 25, 2009, ACPS convened an IEP team meeting⁵ to review the student's program and progress and to revise the IEP, as appropriate. The documentation of the meeting indicates that the team did not make any determinations regarding the student's placement in the Type III education program (Docs. c and e).

Discussion/Conclusions

As stated above, a student's IEP may be implemented in a Type III general education program through a transitional instructional program. When a student's IEP is implemented in a Type III program, the following procedures must be followed:

- The Type III program staff must contact the LSS in which the educational program is located and must request an IEP team meeting.
- Pending the convening of the IEP team, the student may be enrolled in the general education program on an interim basis implementing the IEP to the extent feasible within the resources of the facility.

⁵ As discussed below, in Allegation #2, additional violations have been identified regarding the September 25, 2009 IEP team meeting.

- At the IEP team meeting, the IEP team must review the IEP and the ability of the school to implement the IEP. Based on that data, the team must determine whether:
 - The nonpublic Type III general education program can implement the IEP;
 - Special education instruction and related services, in addition to those general education services provided by the Type III general education program must be provided by the LSS on the grounds of the Type III general education facility; or
 - The IEP will be implemented in a public school special education program or an approved nonpublic school special education program (COMAR 13A.09.10.20).

ACPS

Based on Finding of Fact #3, MSDE finds that when ACPS convened an IEP team meeting, it did not make any of the required determinations regarding the student's placement in the Type III program. Therefore, MSDE finds a violation regarding this allegation with respect to ACPS.

GCPS

Based on Findings of Fact #1 and 2, MSDE finds that GCPS did not ensure that proper procedures were followed when the student was placed in the Type III educational program at XXXXXX because:

- GCPS did not ensure that an IEP team meeting was held to determine whether the student's IEP could be implemented in a public school; and
- GCPS did not ensure that decisions regarding appropriate services for the student at XXXXXXXXXX were made by an IEP team.

Therefore, MSDE finds that violations have occurred regarding this allegation with respect to GCPS.

ALLEGATION #2:

PARTICIPANTS AT THE SEPTEMBER 2009 IEP TEAM MEETING

Findings of Fact:

4. The documentation of the September 25, 2009 ACPS IEP team meeting indicates that the student's mother "gave verbal permission to develop [the student's] IEP" without her presence. However, there is no documentation that ACPS sent a written invitation to her that included the purpose, time, date, and location of the meeting, or who would attend. There is also no documentation that ACPS had a written agreement with the student's mother to amend the IEP outside of the IEP team process (Docs. e, n, and review of education record).

5. There is no documentation that ACPS invited a teacher of the student, either general education or special education, to the meeting. There is no documentation that the student's mother and ACPS agreed, in writing, to excuse the teacher from the meeting (Review of education record).
6. There is no documentation that personnel from GCPS 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 was invited to, attended, or participated in the meeting (Review of education record).
7. ACPS personnel acknowledge that they did not obtain a copy of the Court Order committing the custody of the student to the ACDSS in order to determine who had education decision-making authority or whether a parent surrogate needed to be appointed (Review of education record and interview with ACPS personnel).

Discussion/Conclusions:

The IEP team must include the following members:

- The parent(s);
- 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
- When appropriate, the student (34 CFR §300.321).

To ensure that the rights of a student are protected, the student's parent must be provided with the opportunity to participate in IEP team meetings (34 CFR §300.322). To ensure parent participation, the school system must provide parents with written notice at least ten (10) days in advance of the meeting. The notice must state the purpose, time, date, and location of the meeting, and who will be in attendance (COMAR 13A.05.01.07).

A "parent" under IDEA includes a biological or adoptive parent of the student and a parent surrogate who has been appointed in accordance with IDEA (34 CFR §300.30). A parent surrogate must be appointed under certain circumstances, including when no parent of the student can be identified or located or when the student is a ward of the State under the laws of the State. A student is a ward of the State if the student has been committed by a court of competent jurisdiction to the legal custody of a State or county agency or official with the express authorization that the State or county agency or official make educational decisions for the student (34 CFR §300.519 and Md. Code Ann., Educ. §8-412 (2007)).

ACPS

Based on Findings of Fact #1 and 4-7, MSDE finds that there is documentation that the student was committed to the custody of the ACDSS, but there is no documentation that the ACPS took steps to determine who had educational decision-making authority or to ensure that a parent of the student had the opportunity to participate or that a special education or general education teacher of the student's participated. Therefore, MSDE finds violations occurred regarding this allegation with respect to ACPS.

GCPS

As stated above in Allegation #1, GCPS did not convene the IEP team meeting, and was not invited by ACPS to attend the IEP team meeting and therefore was not aware of the meeting that is the subject of the allegation. Therefore, MSDE finds no violation regarding this allegation with respect to GCPS.

ALLEGATION #3: **DETERMINATION THAT THE STUDENT WOULD PARTICIPATE IN AN ALTERNATE STATE-WIDE ASSESSMENT**

Finding of Fact:

8. There is documentation that the ACPS IEP team, which did not include personnel from GCPS, reviewed the student's program at IEP team meetings on September 25, 2009, March 2, 2010, April 27, 2010, May 10, 2010, and September 23, 2010. Documentation of each of these meetings indicates that the team determined that the student would participate in an alternate statewide assessment but does not document that the team considered the factors required in finding the student eligible to participate in an alternate statewide assessment. Rather, the documented basis states that the student is working towards a Maryland High School Certificate (Docs. e, g, h, j, z, and aa)

Discussion/Conclusions:

Each public agency must ensure that all students with disabilities are included in all general State and district-wide assessments with appropriate accommodations and alternate assessments, if necessary, as indicated in the IEP (34 CFR §300.160). Each state must develop and implement alternate assessments and guidelines for the participation of students with disabilities in alternate assessments for those students who cannot participate in regular assessments, even with accommodations, as indicated in the IEP (34 CFR §300.160).

In Maryland, there are two alternate assessment programs – the modified school assessment (Mod-MSA) based on grade-level academic content standards and modified academic achievement standards and the alternate Maryland school assessment (Alt-MSA) based on alternate academic achievement standards. The Maryland Accommodations Manual (Manual) identifies the eligibility criteria required for each alternate assessment.

Mod-MSA

In order to be eligible to take the Mod-MSA, a student must meet *each* of the following criteria:

- The student is learning based on the State's approved grade-level Academic Content Standards for the grade in which the student is enrolled. There must be sufficient objective evidence demonstrating that the student is not likely to achieve grade-level proficiency within the school year covered by the IEP;
- The student requires and receives modified academic achievement standards aligned with the *Maryland Academic Content Standards* for the student's grade level during instruction and assessments. In addition, specific accommodations implemented in these instructional and assessment settings may include less complex test items, fewer and shorter reading passages, shorter or less difficult questions, and test items with fewer answer choices;
- The student has had consecutive years of individualized intensive instruction in reading and/or mathematics and/or science consistent with the IEP, and although progress toward grade-level standards was made, is not yet making progress at grade level; and
- The student demonstrates that he/she cannot attain proficiency on the actual grade-level MSA, even with the provision of accommodations based on documented multiple valid and objective measures of student's progress or lack of progress. Examples include State assessments, district-wide assessments, data gathered from classroom assessments, and other formative assessments that can validate documented academic achievement in response to appropriate instruction. There must be enough time to document the progress (or lack of progress) in response to appropriate instruction (Manual, section 3-5, February 15, 2008).

Alt-MSA

In order to be eligible for to take the Alt-MSA, a student must have a *significant cognitive disability* and meet *each* of the following criteria:

- The student is learning (at emerging, readiness, or functional literacy levels) extended Maryland Reading and extended Maryland Mathematics Content Standards objectives;
- The student requires explicit and ongoing instruction in functional skills;
- The student requires extensive and substantial modification (*e.g.*, reduced complexity of objectives and learning materials, and more time to learn) of the general education curriculum. The curriculum differs significantly from that of their non-disabled peers. They learn different objectives, may use different materials, and may participate in different learning activities;

- The student requires intensive instruction and may require extensive supports, including physical prompts, to learn, apply, and transfer or generalize knowledge and skills to multiple settings;
- The student requires extensive support to perform and participate meaningfully and productively in daily activities in school, home, community, and work environments; and
- The student cannot participate in the MSA even with accommodations (Manual, section 3-7, February 15, 2008) (emphasis added).

ACPS

Based on Finding of Fact #8, MSDE finds that the ACPS IEP team did not follow proper procedures when determining that the student would participate in the Alt-MSA because it did not consider whether the student met the required eligibility criteria and complete the documentation required when making the determination. Therefore, MSDE finds a violation regarding this allegation with respect to ACPS.

GCPS

As stated in the preliminary discussion, when the student was placed in the XXXXXXXX, GCPS became responsible for providing FAPE to the student. However, based on Finding of Fact #8, MSDE finds that GCPS was not invited by ACPS to any of the IEP team meetings at which the determination was made that the student qualifies to participate in an alternate assessment. Therefore, MSDE finds no violation regarding the allegation with respect to GCPS.

ALLEGATION #4:

ENSURING THE STUDENT PARTICIPATES IN STATEWIDE ASSESSMENTS

Findings of Fact:

9. There is no documentation that the student, who was in the fifth (5th) grade during the 2009-2010 school year, has participated in a statewide assessment between September 2009 and the end of the 2009-2010 school year. In fact, at an IEP team meeting held on March 2, 2010, there is documentation that XXXXXXXX staff informed ACPS personnel that the student did not take *any* statewide assessment during the 2009-2010 school year (Doc. f and review of education record).
10. The documentation of the March 2, 2010 meeting indicates that ACPS personnel determined that the student “would be considered a non-participant for the ACPS system” but does not indicate the basis for the decision. There is also no documentation that ACPS reported to MSDE that this student was a non-participant in any of these assessments, as required (Doc. f, interview with ACPS personnel and review of education record).

Discussion/Conclusions:

As stated above, IDEA requires that a public agency must ensure that *all* students with disabilities are included in State and district-wide assessments (34 CFR §300.160). In Maryland, all students in grades three (3) through eight (8) are required to participate in the Maryland School Assessment (MSA) Program. No students are exempt from participation in the MSA Program except for the following special circumstances:

- English language learners who are in their first year of enrollment in a U.S. school may substitute their test results on the English Language Proficiency Test for the Reading MSA; and
- Where there is documentation from a medical doctor of a “significant medical emergency,” such as hospitalization for a life-threatening condition or a serious accident (Manual, sections 2-5 through 2-8, February 15, 2008).

GCPS

As found in the preliminary discussion, GCPS was responsible for providing FAPE to the student while he was enrolled at the XXXXXXXX. Based on Findings of Fact #9 and 10, MSDE finds that the student was required to participate in the MSA but did not do so between September 2009² and May 7, 2010. Therefore, MSDE finds a violation regarding the allegation with respect to GCPS for this period.

ACPS

As found in the preliminary discussion, ACPS was responsible for providing FAPE to the student between May 7, 2010, and the end of the 2009-2010 school year, when he had been returned to the custody of his mother. Based Findings of Fact #9 and 10, MSDE finds that the student was required to participate in the MSA between May 7, 2010 and the end of the 2009-2010 school year but did not do so. Therefore, MSDE finds a violation regarding the allegation with respect to ACPS for this period.

ALLEGATIONS #5 and #6:

**ENSURING THE STUDENT’S IEP ADDRESSES
HIS ACADEMIC AND BEHAVIORAL NEEDS SINCE
SEPTEMBER 2009**

Findings of Fact:

IEP in effect between September 2009 and May 7, 2010

11. At the September 25, 2009 meeting, there is documentation that the ACPS IEP team included the student’s teachers from the 2008-2009 school year but not the student’s parent, the student’s current teachers, or GCPS personnel. The ACPS IEP team considered the data, including information that the student resided in the XXXXXX XXXX

XXXX⁶ and reports of the student's progress. Based on its review of the data, the ACPS IEP team determined that the student continued to have needs in the areas of math calculation, written language expression, behavior related to aggression and non-compliance, fine motor skills, and gross motor skills. The team also determined that the student had additional needs in the area of reading fluency and reading comprehension (Docs. d, e, and review of education record).

12. The documentation of the September 25, 2009 meeting indicates that the ACPS IEP team developed annual goals to assist the student in improving reading fluency and reading comprehension. The team revised the student's math calculation and written language expression goals consistent with the reports of the student's progress, and determined that the remaining goals related to behavior, fine motor skills, and gross motor skills remained appropriate. The team also determined that the special education services in the student's program remained appropriate (Doc. e).
13. The documentation of the September 25, 2009 meeting indicates that the ACPS IEP team determined that the least restrictive environment (LRE) in which the student's IEP could be implemented was at XXXXXXXXXXXX School, a general education public school in the ACPS (Doc. e).
14. The ACPS IEP team reconvened on March 2, 2010, at the request of staff at the XXXX XXXXXX. The documentation of the meeting indicates that the IEP team included the student's mother, the student's teachers from the XXXXXXXX, and the student's service providers. However, there is no documentation that GCPS personnel were invited to attend the meeting (Doc. f and review of education record).
15. The documentation of the March 2, 2010 meeting indicates that the team considered the evaluative data, which included:
 - a. Reports on the student's progress toward achieving the annual IEP goals;
 - b. Reports from the student's related service providers;
 - c. Input from the Director of the XXXXXXXXXXXX, which indicated that the staff at XXXXXXXX believed the transition program "worked" for the student; and
 - d. A report from the student's ACDSS social worker in which she indicated that a court date was upcoming and recommended that the student remain in the XXXX XXXX transition program until the court makes its decision regarding placement (Doc. f).
16. Based upon its review of the information, the team at the March 2, 2010 meeting determined that the program remained appropriate and agreed to meet again once the

⁶ ACPS personnel reported to MSDE that at the September 25, 2009 meeting, the IEP team was informed that the student's placement at the XXXXXXXXXXXX was temporary and indicated that the team developed the IEP to be in place upon the student's discharge from the residential placement (Interview with ACPS personnel).

Court made a determination regarding the student's residential placement at the hearing (Doc. f).

IEP in effect between the student's discharge from the XXXXXXXX and September 23, 2010

17. On April 27, 2010 and May 10, 2010,⁷ the ACPS IEP team, including the student's mother and the student's teachers from the XXXXXXXX, convened to "consider placement options." The documentation of the meeting indicates that the team considered the evaluative data, which included:
 - a. Reports of the student's progress toward achieving the annual goals;
 - b. A report from the student's ACDSS social worker regarding the student's progress in the residential placement, which indicated that the student's behavior had been declining in the residential setting; and
 - c. Information from ACPS personnel regarding the programs available to him in both public and nonpublic school settings in the ACPS (Docs. g, h, and j).
18. Based on its review of the data, the ACPS IEP team determined that the student required instructional and testing accommodations, including verbatim reader, the use of calculation devices, extended time to complete assignments, and multiple or frequent breaks. The team determined that the remainder of the student's program remained appropriate (Docs. h and j).
19. At the May 10, 2010 meeting the ACPS IEP team determined that the student's IEP could not be implemented in the school that the student would otherwise attend if not disabled because he has "intense behavior, emotional, and academic needs that require a small structured group, the implementation of an intense behavior intervention plan, and the presentation of a modified curriculum." The team determined that the student required placement at the XXXXXXXX at XXXXXXX, a nonpublic separate special education school (Doc. j).
20. There is documentation that a functional behavioral assessment (FBA) was conducted and a behavior intervention plan (BIP) developed on June 9, 2010, though there is no documentation of when the team determined that this assessment was necessary and there is no documentation that the student's mother provided consent for the FBA to be conducted and no documentation that the BIP was developed by an IEP team (Docs. p and q).

⁷ The documentation indicates that the IEP team in Allegany County convened on April 27, 2010 in anticipation of the student's discharge. The team did not complete its review of the student's program and placement and reconvened on Monday, May 10, 2010. The student was discharged from the XXXXXXXXXXXX on May 7, 2010, and began attending XXXXXXXXXXXX at XXXXXXXX on May 11, 2010 (Docs. g, h, i, j, and m).

IEP in effect since September 23, 2010

21. Following the student's placement at XXXXXXXXXXXX on July 8, 2010 and school staff's review of the student's education record, XXXXXXXXXXXX staff requested a re-evaluation due to questions about the accuracy of the data relating to the student's cognitive ability. On September 23, 2010, the ACPS IEP team, including the student's mother and staff from the XXXXXXXXXXXX convened and determined that psychological, educational, speech/language, and physical therapy assessments were required, and the student's mother provided consent for the assessments to be conducted. An IEP team meeting is being scheduled, through BCPS, to review the results of these assessments (Docs. v, w, x, z, and aa).
22. At the September 23, 2010 meeting, the team decided that pending review of the assessment results, the IEP would be revised to include a goal for the student to improve his visual motor skills. The team further determined that the student continued to have needs in math calculation, reading comprehension, reading fluency, written language expression, behavior related to aggression and noncompliance, fine motor skills, and gross motor skills, and revised the annual goals based on reports of the student's progress in these areas (Doc. aa).
23. At the September 23, 2010 meeting, the team determined that the special education services required by the IEP remained appropriate to assist the student in achieving the annual goals (Doc. aa).
24. At the September 23, 2010 meeting, the team determined that the LRE in which the IEP can be implemented is a nonpublic special education school. The team determined that the student required behavioral supports on a daily basis in order to implement the IEP in the LRE, and revised the student's BIP (Docs. w, z, and aa).

Discussion/Conclusions:

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).

Unless the student's parent and the public agency agree, in writing, to allow amendments to the IEP outside of the IEP team process, each student's IEP must be developed by an IEP team that includes the proper participants (34 CFR §300.324 and COMAR 13A.05.01.07).

The public agency must obtain informed parental consent prior to conducting any re-evaluation of a student with a disability unless:

- The parent *refuses* to consent. In this situation, the public agency may pursue the re-evaluation by using the consent override procedures; or

- The parent *has failed to respond* after the public agency made reasonable efforts to obtain consent (34 CFR §300.300).

ACPS

As found in the preliminary discussion, GCPS was responsible for providing FAPE to the student while he was enrolled in the XXXXXXXX. Nevertheless, based on Findings of Fact #11 and 14, MSDE finds that ACPS continued to convene IEP team meetings during this period. Based on Findings of Fact #11-16, MSDE finds that while the ACPS IEP team considered the evaluative data and developed a program consistent with that data, ACPS did not ensure the IEP team meetings included the required participants. Therefore, MSDE finds a violation regarding this allegation with respect to ACPS from September 25, 2009 until May 7, 2010, when the student was discharged from the XXXXXXXX.

As found in the preliminary discussion, ACPS became responsible for providing FAPE to the student on May 7, 2010, when the student was returned to the custody of his mother. Based on Findings of Fact #17-20, MSDE finds that there is no documentation that consent was obtained from the student's parent to conduct the June 9, 2010 assessments or a written agreement obtained to amend the IEP without convening an IEP team meeting.

However, based on Finding of Fact #21, MSDE finds that the IEP team that convened on September 23, 2010 included the proper participants. Based on Findings of Fact #22-24, MSDE further finds that the team at the September 23, 2010 meeting considered the available data and developed a program consistent with that data. Therefore, MSDE finds that a violation occurred regarding this allegation with respect to ACPS from May 7, 2010 until September 23, 2010.

GCPS

As found in the preliminary discussion, GCPS was responsible for providing FAPE to the student while he was enrolled in the XXXXXXXX. However, based on Findings of Fact #11 and 14, MSDE finds that GCPS was not invited by ACPS to attend any of the IEP team meetings at which the student's IEP was reviewed and revised. Therefore, MSDE finds no violation regarding this allegation with respect to GCPS.

BCPS

In this case, the investigation included BCPS because the XXXXXXXXXXXX and the XXXXXX XXXX are located in that jurisdiction. However, as found in the preliminary discussion, ACPS was responsible for the provision of FAPE to the student at the XXXXXXXXXXXXX, the nonpublic residential school on the grounds of the XXXXXXXXXXXX. Therefore, BCPS had no obligation to ensure that the student's IEP addresses his academic and behavior needs. As a result, MSDE finds no violation regarding this allegation with respect to BCPS.

ALLEGATIONS #7 and #8: **MEETING TO ADDRESS THE LACK OF
EXPECTED PROGRESS TOWARD ACHIEVING
THE ANNUAL GOALS SINCE SEPTEMBER 2009**

Findings of Fact:

25. The documentation of the September 25, 2009 ACPS IEP team meeting indicates that the team considered data from the fourth (4th) quarter of the 2008-2009 school year that the student was not making progress toward achieving the annual goal related to behavior. However, there is no documentation that the team reviewed and revised the student's program as appropriate in order to address the lack of expected progress (Doc. e).
26. The documentation of the March 2, 2010 IEP team meeting indicates that the team considered reports from the student's teachers and service providers that the student was making progress toward achieving the annual goals and that the student "ha[d] come a long way" behaviorally (Doc. f).
27. The documentation of the April 27, 2010 and May 10, 2010 IEP team meetings indicates that the team considered reports from the student's teachers and service providers that the student was making progress toward achieving all of the annual goals in the educational setting but had "declining" behavior in the residential setting. As a result, the team at the May 10, 2010 meeting revised the student's program to include an additional goal to assist the student in using therapeutic interventions and additional supports such as direct counseling and the use of physical restraint "when all other attempts to keep [the student] safe have been used and he poses a threat to himself" (Docs. h and j).
28. The documentation of the September 23, 2010 IEP team meeting indicates that after considering all of the data concerning the student, including information about the student's continued behavioral decline in the residential setting, the team ordered updated assessments and revised the student's BIP consistent with the data (Docs. v, w, x, z, and aa).

Discussion/Conclusions:

The public agency must ensure that the IEP team reviews each student's IEP to determine whether the annual goals are being achieved and revises the IEP to address any lack of expected progress toward achieving the goals (34 CFR §300.324).

ACPS

Based on Finding of Fact #25, MSDE finds that there is documentation that the IEP team at the September 25, 2009 IEP team meeting considered data that showed that the student did not make progress toward achieving the annual goals related to behavior but did not revise the student's program to address that lack of expected progress.

Based on Finding of Fact #26, MSDE finds that at the March 2, 2010 meeting, the IEP team, which was convened while the student continued to be placed at the XXXXXXXXX, considered data that showed that the student was once again making progress toward achieving the annual goals related to behavior. Based on Finding of Fact #27, MSDE finds that at subsequent

meetings, the team considered information that the student was not making progress in the and revised the student's program. However, as found in Allegations #2, #5, and #6, ACPS did not ensure that the proper participants were included on the team that made the decisions at these meetings. Therefore, MSDE finds a violation regarding this allegation with respect to ACPS.

However, based on Finding of Fact #28, MSDE finds that at the September 23, 2010 meeting, which did include the proper participants, there is documentation that the team considered information that the student's behavior continued to decline, ordered updated assessments, and revised the student's BIP. Therefore, MSDE finds that a violation occurred regarding this allegation with respect to ACPS from September 25, 2009 until September 23, 2010.

GCPS

As found in the preliminary discussion, GCPS was responsible for providing FAPE to the student while he was enrolled in the XXXXXXXXXX. However, as found in Allegations #2, #5, and #6, GCPS was not invited by ACPS to attend any of the IEP team meetings at which the student's IEP was reviewed and revised. Therefore, MSDE finds no violation regarding this allegation with respect to GCPS.

BCPS

As found in the preliminary discussion, ACPS was responsible for providing FAPE to the student at the XXXXXXXXXX, the nonpublic residential school on the grounds of the XXXXXXXXXX XXXXX. Therefore, BCPS had no obligation to meet to address any lack of expected progress toward achieving the annual IEP goals. As a result, MSDE finds no violation regarding this allegation with respect to BCPS.

ALLEGATION #9: PROVISION OF SPECIAL EDUCATION INSTRUCTION AND RELATED SERVICES IN THE PLACEMENT REQUIRED BY THE IEP

Findings of Fact:

29. The IEP in effect while the student was placed in the Type III educational program at the XXXXXXXXXX required that the student receive the following special education services:
 - a. Special education instruction from a special education teacher for thirty-one and one-quarter (31¼) hours per week in a separate special education classroom;
 - b. Occupational Therapy (OT) services for two (2) hours per month outside the general education classroom; and
 - c. Physical Therapy (PT) services for two (2) hours per month outside the general education classroom (Doc. e).

30. The documentation indicates that the student received instruction from both general education and special education teachers in a general education classroom but did not receive instruction in all subjects from a special education teacher. The documentation

also shows that the student's annual IEP goals were being addressed, and that the student was making progress toward achieving the annual goals (Docs. l, m, and review of education record).

31. Service provider logs document that the student received OT and PT services in accordance with the IEP (Docs. s and t).

Discussion/Conclusions:

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 this case, the complainants alleged that the IEP was not implemented while the student was placed in the Type III education program at XXXXXXXX.

GCPS

Based on Finding of Fact #31, MSDE finds that the student was provided with OT and PT services in accordance with his IEP while attending the XXXXXXXXXX. Based on Findings of Fact #29 and 30, MSDE finds that while the annual IEP goals were addressed, the special education instruction was provided by both general and special education teachers despite the fact that the IEP required that it be provided by special education teachers. Based on those same Findings, MSDE further finds that special education instruction was not provided in the educational placement required by the IEP. Therefore, MSDE finds that violations occurred regarding this allegation with respect to GCPS.

ACPS

As found in the preliminary discussion, GCPS was responsible for providing FAPE to the student while he was enrolled in the XXXXXXXXXX. Therefore, ACPS had no obligation to ensure that the student's IEP was implemented. As a result, MSDE finds no violation regarding this allegation with respect to ACPS.

ALLEGATION #10: PROVISION OF SPECIAL EDUCATION INSTRUCTION DURING THE STUDENT'S HOSPITALIZATION AT BROOK LANE HOSPITAL

Findings of Fact:

32. The student was hospitalized in Washington County between June 10, 2010 and July 7, 2010, while his mother continued to reside in Allegany County. There is documentation that the student required Extended School Year (ESY) services for the summer of 2010. There is documentation that the ACPS school year ended prior to the student's hospitalization in Washington County and he was discharged prior to the date that the ACPS ESY services began (Docs. o and ii).
33. ACPS personnel acknowledge and WCPS personnel confirmed that ACPS did not inform WCPS that the student was temporarily residing in the jurisdiction of the WCPS. ACPS does not have a process in place for contacting other jurisdictions in order to inform them

of a student's placement in their county and for ensuring collaboration with that county in order to provide FAPE (Interview with ACPS personnel).

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). When a student with a disability is unable to participate in the school of enrollment due to a physical or emotional condition, the LSS must make instructional services available to the student during convalescence or treatment time in a medical institution or a therapeutic treatment center (COMAR 13A.03.05.03).

In order to clarify the roles and responsibilities of local education agencies with respect to students in out-of-county living arrangements, MSDE issued a Memorandum to local public agencies. In this Memorandum, MSDE explained that, in order to ensure the full implementation of each student's IEP, it is imperative that the service providing and financially responsible local school systems participate collaboratively in the educational decision-making process for the student (MSDE Memorandum, dated April 24, 2001).

WCPS

As found in the preliminary discussion, ACPS was responsible for providing FAPE to the student while he was hospitalized in Washington County. Therefore, MSDE finds no violation regarding this allegation with respect to WCPS.

ACPS

As found in the preliminary discussion section, the student did not receive educational services while hospitalized at XXXXXX. However, based on Finding of Fact #32, MSDE finds that the period of the student's hospitalization fell in between the end of the 2009-2010 school year and the beginning of ESY services. Therefore, ACPS was not required to provide the student with special education services while he was hospitalized. As a result, MSDE finds no violation regarding this allegation with respect to ACPS.

Additional discussion

Based on Finding of Fact #33, MSDE finds that ACPS does not have a system in place to notify other jurisdictions that students, for whom ACPS continues to have responsibility for the provision of FAPE, are residing in their jurisdiction. Although there is no legal requirement to do so, MSDE would encourage ACPS to ensure that it develops such a procedure.

ALLEGATION #11: **PROVISION OF SPECIAL EDUCATION SERVICES IN
THE PLACEMENT REQUIRED BY THE IEP SINCE
JULY 2010**

Findings of Fact:

34. The IEP requires that the student be provided with the following special education services:
- a. Special education instruction from a special education teacher or an instructional assistant for twenty-eight (28) hours per week in a separate special education classroom;
 - b. OT services for two (2) hours per month outside the general education classroom;
 - c. PT services for two (2) hours per month outside the general education classroom; and
 - d. Counseling services for one (1) hour per week outside the general education classroom (Doc. aa).
35. Teacher progress reports from XXXXXXXXX, dated August 10, 2010, September 20, 2010, and October 15, 2010 document that the student is receiving special education instruction in accordance with the IEP (Doc. ee).
36. Service provider logs from the OT, PT, and school social worker document that the student is receiving OT, PT, and counseling services in accordance with the IEP (Docs. ff, gg, and hh).

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).

BCPS

As found in the preliminary discussion, ACPS was responsible for providing FAPE to the student in the nonpublic placement at XXXXXXXXXXXX in Baltimore County. Therefore, MSDE finds no violation regarding this allegation with respect to BCPS.

ACPS

As found in the preliminary discussion, ACPS was responsible for providing FAPE to the student in the nonpublic placement at XXXXXXXXXXXX. Based on Findings of Fact #34-36, MSDE finds that there is documentation that the student received services in accordance with his IEP. Therefore, MSDE finds no violation regarding this allegation with respect to ACPS.

CORRECTIVE ACTIONS/TIMELINE:

Student-specific

MSDE requires ACPS and GCPS to provide documentation by February 28, 2011, that a remedy has been offered to the student's mother to redress the violations identified in the LOF. If the student's mother disagrees with the remedy offered, she maintains the right to request mediation or file a due process complaint, in accordance with IDEA.

Systemic

GCPS

Pursuant to corrective actions that have been required as a result of State complaint investigation #11-015, GCPS has been directed to take system-wide corrective action to address the violations identified in this investigation related to ensuring that FAPE is provided to students placed in Type III education programs located in Garrett County. Therefore, no further corrective action is required. MSDE personnel will continue to monitor the implementation of the school system's corrective actions regarding these matters.

ACPS

MSDE requires ACPS to provide documentation by March 31, 2011 of the steps it has taken to determine if the violations related to the following requirements are unique to this case or if they represent a pattern of noncompliance within the ACPS:

1. Following proper procedures for determining whether a student's IEP can be implemented in a Type III education program;
2. Ensuring that ACPS Central Office IEP teams include proper participants, including taking steps to determine who has education decision-making authority for students in State-supervised care, and ensuring that the IEP teams follow proper procedures when developing the IEP so that it addresses the student's academic and behavioral needs and addresses lack of progress toward achieving the annual IEP goals; and
3. Determining whether a student will participate in an alternate stateside assessment and ensuring that all students participate in such assessments.

If there is a pattern of noncompliance, ACPS must also provide MSDE with documentation of the steps that have been taken to ensure compliance with the requirements, including a description of how it will evaluate the effectiveness of the steps taken to ensure that the violation does not recur.

Documentation of all corrective action taken is to be submitted to this office to: Attention: Chief, Complaint Investigation/Due Process Branch, Division of Special Education/Early Intervention Services, MSDE.

TECHNICAL ASSISTANCE:

Technical assistance is available to the parties through Mrs. Martha J. Arthur, Education Program Specialist, MSDE. Mrs. Arthur may be contacted at (410) 767-0255.

Please be advised that both parties have the right to submit additional written documentation to this office within fifteen (15) days of the date of this letter if they disagree with the findings of fact or conclusions reached in this LOF. 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 LOF. If additional information is provided, it will be reviewed and 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 LOF.

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

Sincerely,

Carol Ann Heath, Ed.D.
Assistant State Superintendent
Division of Special Education/
Early Intervention Services

CAH:ks

cc: XXXXXXXXXXXX
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