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State Superintendent of Schools

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June 21, 2011

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

RE: XXXXX  
Reference: #11-095

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. This correspondence is the report of the final results of the investigation.

**ALLEGATION:**

On May 18, 2011, MSDE received a complaint from Ms. XXXXXXXXXXX, 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. MSDE investigated the allegation that AACPS did not ensure that the April 26, 2011 decision made by the Individualized Education Program (IEP) team, regarding the provision of study guides, was based on the student's identified needs, in accordance with 34 CFR §300.324.

**INVESTIGATIVE PROCEDURES:**

1. On May 23, 2011, MSDE sent a copy of the complaint, via facsimile, to Ms. Mary Tillar, Director of Special Education, AACPS.
2. On May 24, 2011, Mrs. Martha J. Arthur, Education Program Specialist, MSDE, contacted the complainant in response to questions the complainant had about corrective actions to be taken as a result of a previous State complaint investigation regarding the student (#11-048). At that time, Mrs. Arthur explained to the complainant that

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information contained in the complainant's May 18, 2011 correspondence would be treated as a separate State complaint, and that the results of the investigation of the new complaint would impact MSDE's follow up to the corrective action being taken as a result of the previous complaint investigation. MSDE also notified Ms. Tillar of the new allegation to be investigated and requested that her office review the alleged violation.

3. MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings (LOF), which includes:
  - a. Invitation to the complainant to attend an IEP team meeting on March 29, 2011;
  - b. Written summary of the March 29, 2011 IEP team meeting;
  - c. Invitation to the complainant to attend an IEP team meeting on April 26, 2011;
  - d. Written summary of the April 26, 2011 IEP team meeting; and
  - e. Correspondence from the complainant containing allegations of violations of IDEA, received by MSDE on May 18, 2011.

#### **BACKGROUND:**

The student is twelve (12) years old, is identified as a student with a visual impairment under IDEA, and receives special education instruction and related services. She attends XXXXXXXXXXXXXXXXXXXX. During the period of time addressed by this investigation, the complainant was provided with notice of the procedural safeguards.

On February 28, 2011, MSDE issued an LOF after completing an investigation of a previous State complaint filed by the complainant regarding the student (Complaint #11-048). As a result of that investigation, AACPS was required to take specific corrective action, including convening the IEP to review and revise the IEP to ensure that it is written clearly with respect to the accommodations and supplementary aids and services to be provided to the student. The allegation subject to this investigation arises out of the procedures followed by AACPS when conducting that IEP team meeting (Docs. a - e).

#### **FINDINGS OF FACT:**

1. On March 29, 2011, the IEP team convened to, among other things, review and revise the IEP to ensure that it is written clearly with respect to the provision of study guides to the student. The written summary of the meeting states that the complainant requested that the IEP require that the student be provided with study guides five (5) days in advance of both tests and quizzes. The summary further states that the student's teachers indicated that the study guides could be provided five (5) days prior to tests, but only three (3) days before quizzes. The team then decided that the study guides would be provided five (5) days in advance of both tests and quizzes, but the basis for the decision was not documented (Doc. b).

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2. On April 26, 2011, the IEP team reconvened. Documentation of the meeting states the following:

The teachers met after the previous IEP meeting and decided that giving study guides 5 days before chapter tests is acceptable. However, giving study guides 5 days before quizzes is unrealistic because they feel it is detrimental to [the student]. In a DI (differentiated instruction) classroom teachers change their instruction often depending on the student's needs and it affects her ongoing instruction (Doc. d).

3. At the April 26, 2011 meeting, the team decided that the IEP would be revised to continue to require that the student be provided with study guides five (5) days before chapter tests, but only three (3) days before quizzes. The complainant expressed her disagreement with the team's decision at the meeting (Doc. d).

#### **DISCUSSION/CONCLUSIONS:**

In order to ensure the provision of a free appropriate public education (FAPE) to a student with a disability under IDEA, the public agency must provide services that address the student's identified special education instruction and related services needs. To appropriately identify the needs that arise from the disability, the team must consider the strengths of the student, concerns of the parents, the results of the most recent evaluations, and information about the student's academic and functional performance in the classroom (34 CFR §§300.320 and .324).

Written notice must be given to parents a reasonable time before the public agency proposes or refuses to initiate or change the identification, evaluation, educational placement, or provision of FAPE. This notice includes a description of the action proposed or refused, the basis for the decision, other options considered, and the data used in making the decision (34 CFR §300.503). It is important that the parent be provided with this written notice so that the parent can determine whether to exercise the right to utilize the dispute resolution procedures to resolve any disagreement with the team's decisions.

Based on Findings of Fact #1 and 2, MSDE finds that there is documentation that the team considered information from both the complainant and the student's teachers when making the decision regarding the provision of study guides to the student. However, based on Finding of Fact #1, this office finds that there is no documentation of the basis for the decision made by the team on March 29, 2011. Thus, there is no documentation that the decision was consistent with the data considered by the team or that the complainant was provided with proper written notice of the decisions made on that date. Therefore, MSDE finds that a violation occurred.

Notwithstanding the violation, based on Findings of Fact #2 and 3, MSDE finds that when the team reconvened and revised the IEP on April 26, 2011, it documented the basis for its decision. This decision was consistent with information from the student's teachers that provision of study guides

five (5) days in advance of quizzes would not ensure that the student has adequate information to prepare because of frequent changes to the material covered in instruction. Therefore, MSDE finds that the violation has been remediated and that no student-specific corrective action is required.

This office understands that the complainant disagrees with the team's April 26, 2011 decision about when the study guides for quizzes are to be provided to the student. During the investigation of an allegation that a student has not been provided with an appropriate educational program under IDEA, the state educational agency must determine whether proper procedures were followed when making determinations about the program and whether there is data to support those decisions.

When it is determined that the public agency has not followed proper procedures, the state agency can require the local public agency to ensure that the IEP team follows proper procedures to review and revise, as appropriate, the program to ensure that the program addresses the needs identified in the data and determine a remedy to the student for loss of appropriate services. However, the state educational agency may not overturn an IEP team's decisions (United States Department of Education, Office of Special Education Programs, 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).

In this case, while MSDE finds that a procedural violation occurred at the March 29, 2011 team meeting, this office also finds that the team subsequently reconsidered the matter on April 26, 2011 and that proper procedures were followed when the team revised the IEP at that meeting. Therefore, this office may not overturn the decisions made by the team at the April 26, 2011 meeting. However, the complainant is reminded that she maintains the right to request mediation or to file a due process complaint in order to resolve any continuing dispute regarding how study guides are to be provided to the student.

#### **CORRECTIVE ACTION/TIMELINE:**

MSDE requires AACPS to provide documentation by the start of the 2011-2012 school year of the steps it has taken to determine if the violation identified in the LOF is unique to this case or if it represents a pattern at XXXXXXXXXXXX MS. 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 MSDE. If the school system reports compliance with the requirements, 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, MSDE will re-verify the data to ensure continued compliance with the regulatory requirements, consistent with the requirements. Additionally, the findings in the LOF

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will be shared with MSDE's Office of Quality Assurance and Monitoring for Continuous Improvement for their consideration for future monitoring activities.

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

**TECHNICAL ASSISTANCE:**

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

Please be advised that the parties have the right to submit additional written documentation to this office within fifteen (15) days of the date of this LOF if they disagree with the findings of fact or conclusions. The additional written documentation must not have been provided or otherwise been available to this office during the complaint investigation and must be related to the issues identified and addressed in the LOF. Upon consideration of this additional documentation, this office may leave its findings and conclusions intact, amend its findings and conclusions, set forth additional findings and conclusions, or enter new findings and conclusions. Pending the decision on a request for reconsideration, the school system must implement the corrective action consistent with the timeline requirement as reported in this LOF.

Questions regarding the findings of fact, conclusions or corrective action contained in this LOF should be addressed to this office in writing. The school system and the complainant maintain the right to request mediation or to file a due process complaint if they disagree with the identification, evaluation, placement, or provision of a free appropriate public education (FAPE) for the student, including issues subject to a State complaint investigation, in accordance with IDEA. The MSDE recommends that this LOF be included with any request for mediation or the filing of a due process complaint.

Sincerely,

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

CAH/am

cc : Kevin M. Maxwell  
Ellen Meyer

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Dori Wilson