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January 31, 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: #11-041

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.

**ALLEGATIONS:**

On December 20, 2010, MSDE received a complaint from Mr. XXXXXXXXXXXX, hereafter, “the complainant,” on behalf of his son. In that correspondence, the complainant alleged that the Anne Arundel County Public Schools (AACPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to the above-referenced student. MSDE investigated the following allegations:

1. AACPS did not ensure that a variety of assessment tools and strategies were used to gather sufficient information for an evaluation conducted during the 2010-2011 school year and did not ensure that the evaluation was sufficiently comprehensive to identify all of the student’s special education instruction and related service needs, in accordance with 34 CFR §§300.304 - .305.
2. AACPS did not ensure that proper procedures were followed when responding to the complainant’s requests for an independent educational evaluation (IEE), in accordance with 34 CFR §300.502.

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**INVESTIGATIVE PROCEDURES:**

1. Ms. Idalyn Hauss, MSDE, was assigned to investigate the complaint.
2. On December 21, 2010, Ms. Anita Mandis, Section Chief, Complaint Investigation and Due Process Branch, MSDE, contacted the complainant and clarified the allegations to be investigated.
3. On December 22, 2010, MSDE sent a copy of the complaint, via facsimile, to Ms. Mary Tillar, Director of Special Education, AACPS.
4. On December 28, 2010, MSDE sent correspondence to the complainant that acknowledged receipt of the complaint and identified the allegations subject to this investigation. On the same date, MSDE notified Ms. Tillar of the allegations and requested that her office review the alleged violations.
5. On January 3 and 6, 2011, Ms. Hauss conducted telephone interviews with Ms. Ellen Meyer, Coordinator of Compliance, AACPS, and was provided with documentation related to the allegations.
6. On January 6, 2010, Ms. Hauss conducted a telephone interview with the complainant regarding the allegations in the complaint.
7. MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings (LOF), which includes:
  - a. Summary of Screening, dated March 15, 2010;
  - b. Parent/Guardian Questionnaire, dated March 22, 2010;
  - c. Referral form, dated April 6, 2010;
  - d. Student Evaluation Plan, dated April 6, 2010;
  - e. Consent for Evaluation, dated April 6, 2010;
  - f. Written summary of the April 6, 2010 IEP team meeting;
  - g. Report of an AACPS educational assessment conducted on April 7, 2010;
  - h. Report of an AACPS psychological assessment conducted on April 8, 2010;
  - i. Report of an AACPS classroom observation conducted on April 19, 2010;
  - j. Report of evaluation results, dated April 27, 2010;
  - k. Written summary of the April 27, 2010 IEP team meeting;
  - l. Correspondence to the complainant from AACPS Central Office staff, dated April 30, 2010;
  - m. Section 504 Plan, dated November 22, 2010; and
  - n. Correspondence from the complainant alleging violations of IDEA, received by MSDE on December 20, 2010.

**BACKGROUND:**

The student is nine (9) years old and attends XXXXXXXXXXXXXXXXXXXX. He currently has an Accommodations Plan under Section 504 of the Rehabilitation Act due to food allergies.

On April 27, 2010, AACPS conducted an evaluation under IDEA. The IEP team determined that the student does not meet the criteria for identification as a student with a disability under IDEA.

During the period of time addressed by this investigation, the complainant participated in the education decision-making process, and was provided with notice of the procedural safeguards (Docs. a – f, j, k, and m).

**FINDINGS OF FACT:**

1. On April 6, 2010, an IEP team convened in response to a request for an evaluation under IDEA, which was made by the complainant. On that date, the team considered the following:
  - a. Information from the complainant and the student’s mother that the student is frequently sleepy and falls asleep easily at home, has seasonal and food allergies, lacks concentration and is easily distracted, needs frequent reminders, has breathing problems at night, becomes easily frustrated when doing homework, and avoids reading because he struggles with reading comprehension;
  - b. Information from school system staff that the student has a peanut allergy, has been observed to have a short attention span, displays a lack of motivation, has difficulty making inferences and organizing ideas, has difficulty completing applied math problems, and frequently requires extra time to complete assignments, and
  - c. Information from school staff that the student displays no problems with vision, hearing, gross or fine motor skills, or speech (Docs. a, b, c, d, and f).
2. At the April 6, 2010 meeting, the team decided that an evaluation “in the areas of academic, cognitive, and attention” would be conducted. The complainant and the student’s mother provided written consent for assessments to be conducted. At the meeting, the complainant also requested an IEE, which was denied by school system staff because there were no evaluation results with which the complainant could disagree (Docs. d, e, and f).
3. On April 27, 2010, the IEP team reviewed the following data:

- a. A report of an AACPS psychological assessment completed on April 8, 2010, which states that the student's cognitive ability is in the "average range." The report indicates that scores in the area of inattention were rated by the parents in the "elevated range," and by the teacher in the "average range;"
  - b. A report of an AACPS academic assessment completed on April 7, 2010, which states that the student performs in the "average range" in reading and written expression and in the "above average range" in math;
  - c. A report of an AACPS classroom observation of the student in Language Arts class on April 19, 2010, which indicates that the student was observed to have been attentive and participated in classroom activities, that he did not exhibit fatigue, that he was able to read "independently and understand the ideas he was reading about," and that he is performing "on grade level;"
  - d. Information from the student's mother that the student falls asleep when he is not active at home;
  - e. Information from the complainant and the student's mother that the student has required surgery to address breathing problems;
  - f. Concerns expressed by the complainant and the student's mother that the student has a sibling with attention deficit hyperactivity disorder and that the student also demonstrates difficulty maintaining attention; and
  - g. Information from the student's classroom teacher that the student receives mostly "As" and "Bs" on his report card, and that he has scored in the proficient range on benchmark assessments (Docs. g - k).
4. There is no documentation that the complainant requested a sleep study as part of the evaluation or that any concerns were raised about the student having difficulty remaining alert in school or having difficulty with graphomotor skills (Review of education record).
  5. At the April 27, 2010 IEP team meeting, the team determined that based on the assessment data in the areas of cognitive ability, academic performance, and attention, the student does not meet the criteria for identification as a student with a disability under IDEA. Documentation of the meeting further indicates that the criteria used to determine that the student does not have a specific learning disability was that there was no discrepancy between his cognitive ability and his academic performance. Following the eligibility determination, the complainant expressed disagreement with the evaluation results, and requested an IEE "as well as an assessment in all areas of the suspected disability, to include but not [be] limited to graphomotor skills" (Docs. j and l).

6. On April 30, 2010, AACPS Central Office staff sent the complainant correspondence indicating that an IEE to include psychological and educational assessments would be provided at public expense. The correspondence also included information about the criteria for an IEE and how to proceed to obtain the IEE (Doc. l).
7. The April 30, 2010 correspondence to the complainant from AACPS Central Office staff indicates that AACPS Central Office staff viewed the complainant's request for an evaluation in the area of graphomotor skills as part of his request for an IEE. AACPS Central Office staff denied the complainant's request for testing in the area of graphomotor skills because there was no school system testing conducted in this area as part of the evaluation that was completed, and therefore no results with which the complainant could disagree (Doc. l).
8. The April 30, 2010 correspondence does not indicate an acknowledgement or an understanding by AACPS Central Office staff that the complainant's request for an evaluation based on his concerns about the student's graphomotor skills was in addition to the request for an IEE as part of the first evaluation. There is no documentation that the complainant has been provided with a response to his request for a second evaluation to determine whether the student has a disability related to graphomotor skills (Doc. l).

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

##### **Allegation #1            Comprehensive Evaluation**

The public agency must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about a student to ensure that an evaluation is sufficiently comprehensive to identify all of the student's needs, whether or not commonly linked to the disability (34 CFR §300.304). When conducting an evaluation, the team must review existing evaluation data and on the basis of that review and input from the student's parents, identify what additional data, if any, is needed to determine whether the student is a student with a disability and the educational needs that arise from the disability (34 CFR §300.305).

In this case, the complainant alleges that AACPS did not ensure that the evaluation was comprehensive because assessments to determine the impact of a "sleeping alertness problem" or weakness in graphomotor skills on the student's education were not conducted (Doc. n). Based on Findings of Fact #1 - 5, MSDE finds that during the evaluation that was conducted, no concerns were raised about the student's graphomotor skills or his ability to remain awake and alert in school. Thus, there was no requirement for the student to be evaluated in these areas.

Based on Findings of Fact #1, 2, 3, and 5, MSDE further finds that AACPS ensured that the evaluation was conducted in all areas of concern raised. Therefore, MSDE does not find that a violation occurred with respect to the allegation.

**Allegation #2                      Response to Requests for IEE**

A parent is entitled to one (1) IEE at public expense each time the public agency conducts an evaluation with which the parent disagrees. If the parent requests an IEE, the public agency must, without unnecessary delay, either file a due process complaint to request a hearing to demonstrate that its evaluation is appropriate or ensure that an IEE is provided at public expense (34 CFR §300.502).

In this case, the complainant alleges that AACPS did not follow proper procedures when it denied his requests for an IEE on April 6, 2010 and April 27, 2010 (Doc. n). Based on Findings of Fact #1, 2, 5, and 6, MSDE finds that the complainant was not entitled to an IEE on April 6, 2010 because the school system had not yet conducted assessments. Based on those Findings of Fact, MSDE further finds that in response to the complainant's April 27, 2010 request, the school system offered the complainant an independent evaluation in the areas in which assessments have been conducted. Therefore, this office does not find that a violation occurred with respect to the allegation.

**Additional Issue:**

When a student is referred for an evaluation, the public agency must ensure that the student's parent receives written notice of any assessment procedure the public agency proposes or refuses to conduct, in accordance with COMAR 13A.05.01.04, .12, and 34 CFR §300.503. Based on Finding of Fact #5, MSDE finds that upon completion of the evaluation that was conducted, the complainant made a second request for evaluation based on concerns about graphomotor skills, which were not raised as part of the previous evaluation.

Based on Finding of Fact #5, MSDE finds that the complainant made a second request for evaluation based on his concerns about the student's graphomotor needs, and that this request was in addition to his request for the IEE. However, based on Findings of Fact #6 – 8, AACPS treated it as part of the request for an IEE and not as a second request for evaluation. Based on these Findings of Fact, MSDE finds that AACPS did not ensure that the complainant was provided with written notice of the school system's response to his April 27, 2010 request for evaluation of the student, and that a violation occurred.

**CORRECTIVE ACTIONS/TIMELINES:**

**Student-Specific**

MSDE requires AACPS to provide documentation by March 1, 2011 that the complainant has been provided with a written response to his April 27, 2010 request for an evaluation. If the school system rejects the complainant's request for evaluation, it must provide documentation that it has ensured that the complainant has been provided with proper written notice of the decision.

If the school system accepts the complainant's request, it must provide documentation by April 1, 2011 that an evaluation has been conducted, and that if the student is determined to be a student with a disability, an IEP is developed that addresses the student's identified needs. Additionally, if the team determines that the student is a student with a disability, the school system must provide documentation by April 1, 2011 that the IEP team has determined the amount and nature of *compensatory services*<sup>1</sup> or other remedy to redress the delay in the identification of, and provision of special education services to, the student. If the complainant disagrees with the team's decisions, he maintains the right to request mediation or file a due process complaint, in accordance with IDEA.

### **System-Based**

MSDE requires AACPS to provide documentation of by April 1, 2011 of the steps taken to determine if the procedural violation identified in this LOF represents a pattern of noncompliance within the AACPS Central Office. Specifically, the school system is required to conduct a review of data and 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 Complaint Investigation and Due Process Branch 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 date the school system's initial determination of non-compliance. Upon receipt of this report, MSDE will re-verify the data to ensure continued compliance with the regulatory requirements.

The findings in the LOF will be shared with MSDE's Office of Quality Assurance and Monitoring for Continuous Improvement for their consideration during future monitoring. Verification of the school system's compliance will also be conducted consistent with the requirements of the United States Department of Education, Office of Special Education Programs (OSEP), Memorandum.

Documentation of completion of the required actions is to be submitted to this office to:  
Attention: Chief, Complaint Investigation/Due Process Branch, Division of Special Education/Early Intervention Services, MSDE.

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<sup>1</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).

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### **TECHINCAL 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 any corrective actions consistent with the timeline requirements as reported in this LOF.

Questions regarding the findings of fact, conclusions and corrective actions contained in this LOF should be addressed to this office in writing. The student's parent 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 free appropriate public education 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

c : Kevin M. Maxwell  
Ellen Meyer  
Martha Arthur  
Idalyn Hauss