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Interim State Superintendent of Schools

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September 23, 2011

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Ms. Patty Daley
Director of Special Education
Howard County Public Schools
10910 Route 108
Ellicott City, Maryland 21042-6198

RE: XXXXX
Reference: #12-007

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 July 26, 2011, the MSDE received a complaint from Mr. XXXXXXXXXXXX and Mrs. XXXXXXXXXXXX, hereafter “the complainants,” on behalf of their son. In that correspondence, the complainants alleged that the Howard County Public Schools (HCPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to the above-referenced student.

The MSDE investigated the allegation that the HCPS did not ensure that the Individualized Education Program (IEP) team followed proper procedures when developing the program in effect from the start of the 2010-2011 school year until January 2011. Specifically, the allegation is that the HCPS did not ensure that the IEP team followed proper procedures when determining that the student would participate in the Alternative Maryland State Assessment and that he would exit school with a Maryland High School Certificate of Completion, in accordance with 34 CFR §300.320 and COMAR 13A.03.02.09.

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INVESTIGATIVE PROCEDURES:

1. Ms. Christine Hartman, Education Program Specialist, MSDE, was assigned to investigate the complaint.
2. On July 27, 2011, the MSDE sent a copy of the complaint, via facsimile, to Ms. Patty Daley, Director of Special Education, HCPS, and Ms. Janet Zimmerman, Instructional Facilitator, HCPS.
3. On August 4, 2011, Ms. Hartman conducted a telephone interview with the student's mother and clarified the allegation to be investigated.
4. On August 8, 2011, the MSDE sent correspondence to the complainants that acknowledged receipt of the complaint and identified the allegation subject to this investigation. On the same date, the MSDE notified Ms. Daley of the allegation and requested that her office review the alleged violation.
5. On August 31, 2011, September 1, 2011 and September 6, 2011, the complainants provided the MSDE with documents to consider, via electronic mail (email).
6. On September 8, 2011, Ms. Hartman and Ms. Anita Mandis, Chief, Complaint Investigation Section, Complaint Investigation and Due Process Branch, MSDE, conducted a site visit at XXXXXXXX School to review the student's education record, and interviewed Ms. Catherine Panzer, the School Psychologist for XXXXXXXXXXXX School. Ms. Ashley Van Cleef, Special Education Resource Teacher, HCPS, and Ms. Beverly Schroeder, Special Education Resource Staff, HCPS, attended the site visit as representatives of the HCPS and to provide information on the HCPS policies and procedures, as needed.
7. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
 - a. IEP, dated May 11, 2010;
 - b. IEP, dated December 21, 2010; and
 - c. Psychological Assessment, dated May 11, 2010.

BACKGROUND:

The student is eleven (11) years old. He is identified as a student with autism under IDEA and receives special education instruction and related services. During the 2010-2011 school year, the student was in the fifth (5th) grade at XXXXXXXXXXXXXXXX School. Currently, the student attends XXXXXXXXXXXX School. During the period of time addressed by this investigation, the complainants participated in the education decision-making process, and were provided with

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notice of the procedural safeguards (Docs. a and b, and interviews with the student's mother and HCPS staff).

FINDINGS OF FACTS:

1. The IEP in effect at the start of the 2010-2011 school year was developed on May 11, 2010. The IEP documents that the IEP team determined that the student has a significant cognitive disability, would participate in the Alternative Maryland State Assessment (Alt-MSA), and would pursue a Maryland High School Certificate of Program Completion (Doc. a).
2. At the May 11, 2010 IEP team meeting, the team considered a psychological assessment reporting the student's nonverbal intelligence scores in the "low average" to "average" range. The psychological assessment also indicates that the score for the verbal comprehension portion of the intelligence scale test was 57, correlating to the 0.2 percentile for verbal comprehension, and the student's full scale Intelligence Quotient (IQ) score was 61, placing him in the 0.5 percentile (Docs. a and c).
3. The May 11, 2010 IEP documents that the IEP team reviewed the six (6) criteria required by Maryland guidelines when the team determined that the student would participate in the Alt-MSA. There is documentation to support the determinations made by the IEP team concerning these criteria, including the student's goals and objectives, supports and modifications, present levels of performance, previous Maryland State Assessment (MSA) performance, and a psychological assessment (Docs. a and c, review of the *Maryland State Content Standards* for Reading and Math and the *Maryland Accommodations Manual*, and interviews with HCPS staff).
4. After the IEP team determined that the student met the required State criteria for taking the Alt-MSA, the IEP team sought and was provided with the parent's agreement with the team's determination. HCPS staff report that all HCPS IEP teams are required by the school system to identify for participation in the Alt-MSA only those students whose parents agree with the determination that the Alt-MSA is the appropriate assessment (Doc. a and interview with HCPS staff).
5. On December 21, 2010, the IEP team met again at the request of the student's mother to reconsider the decision regarding the student's participation in the Alt-MSA. At this meeting, the team again determined that the student met the required State criteria for taking the Alt-MSA. When the team sought the parent's agreement with the team's determination, the parent withdrew her consent for her son to participate in the Alt-MSA. Because the parent withdrew her consent, the IEP team determined that the student would participate in the MSA and, as a result, would also pursue a Maryland High School Diploma (Doc. c and interviews with the student's mother and HCPS staff).

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DISCUSSION/CONCLUSIONS:

Determination of the Student's Program

Students in Maryland public schools may pursue either a Maryland High School Diploma or a Maryland High School Certificate of Program Completion. The decision concerning which program a student will pursue may not be made until the student's last year in high school unless the student participates in the Alt-MSA. If a student participates in the Alt-MSA, the decision regarding which program a student will pursue can be made earlier (COMAR 13A.03.02.09).

In this case, based on Finding of Fact #1, the MSDE finds that the IEP team determined on May 11, 2010 that the student would participate in the Alt-MSA. Based upon this decision, the IEP team also determined that the student would pursue a Maryland High School Certificate of Program Completion, which is a decision that can appropriately be made following a determination that a student will participate in the Alt-MSA. Therefore, the MSDE does not find that a violation occurred regarding the IEP team's May 11, 2010 decision that the student would pursue a Maryland High School Certificate of Program Completion.

Based on Finding of Fact #5, the MSDE finds that the IEP team determined on December 21, 2010 that the student will participate in the MSA instead of the Alt-MSA. Based upon this decision, the IEP team also determined that the student would pursue a Maryland High School Diploma, as required by State regulation. Therefore, the MSDE does not find that a violation occurred regarding the IEP team's December 21, 2010 decision that the student would pursue a Maryland High School Diploma.

Determination of the Assessments in which the Student Will Participate

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). The IDEA requires that the IEP team determine the assessments in which a student with a disability will participate (34 CFR §300.320). The IDEA further requires each state to develop and implement alternate assessments and guidelines for the participation of students with disabilities who cannot participate in regular assessments, even with accommodations (34 CFR §300.160).

The MSDE developed guidelines for identifying the students who will participate in the Alt-MSA (*Maryland Accommodations Manual [Manual]*). The *Manual* states that a student with a significant cognitive disability will participate in the Alt-MSA if the student meets each of the six (6) factors listed below.

- 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;

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- 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).

The MSDE has also issued guidance to local school systems in applying the criteria the IEP team must consider when determining whether a student will participate in the ALT-MSA.¹ Information concerning the importance of the parent's role as a member of the team, and the recourse available to the parent if the parent disagrees with the team's decision is included in the guidance.

HCPS personnel report that all IEP teams have been instructed to consider a seventh (7th) factor in determining whether a student will participate in the Alt-MSA. This seventh (7th) factor, which is not included in the guidelines the MSDE was charged with developing by the IDEA, requires parental agreement in order for an IEP team to determine a student will participate in the Alt-MSA. It is the HCPS's policy that, if a parent chooses not to have the student participate in the Alt-MSA, the IEP team determines that the student will not participate in that assessment, even if the student meets the State's criteria for participation.

The parent is a member of the IEP team and is encouraged to participate in the decisions made by the team, including decisions regarding assessment. However, an IEP team cannot abdicate its authority to make the decisions it is required to make by allowing the decision to be made by the parent. Should a parent disagree with any IEP team decision regarding the provision of a free appropriate public education (FAPE), including decisions concerning assessment, the parent may assert his or her dispute resolution options, including mediation and a due process hearing. As part of the dispute resolution process, parents and local school systems are encouraged to work

¹ This guidance can be found in Technical Assistance Bulletin #17, *Understanding the Criteria and Eligibility Process for Students with the Most Significant Cognitive Disabilities Participating in the Maryland Assessment Program*, issued to local school systems on December 7, 2009, and the *ALT-MSA Handbook*, issued on June 1, 2011.

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collaboratively to resolve parents' disputes with IEP team decisions, either formally or informally. However, the IEP team must first make a decision based on the required criteria.

In this case, based on Findings of Facts #1-5, the MSDE finds that the IEP team considered all of the factors contained in the guidance issued by this office when determining the assessment in which the student will participate, and made determinations that were consistent with the data. However, based on Findings of Facts #4 and #5, the MSDE finds that, in addition to the criteria required by the MSDE, the HCPS requires that IEP teams find the presence of an additional factor (parent agreement) when determining the appropriate assessment for a student. Thus, the MSDE finds that the HCPS did not ensure that the IEP team determined the assessment in which the student will participate in accordance with the MSDE guidelines. As a result, the MSDE finds that the HCPS did not ensure that proper procedures were followed when determining the assessment in which the student will participate, and that a violation occurred.

CORRECTIVE ACTIONS/TIMELINES:

Student-specific

The MSDE requires the HCPS to provide documentation by December 1, 2011 that the IEP team has determined the student's participation in State-wide assessments consistent with guidelines established by the MSDE.

The HCPS must provide the complainants with proper written notice of the determinations made at the IEP team meeting, as required by 34 CFR §300.503, including a written explanation of the basis for the determinations. If the complainants disagree with the IEP team's determinations, they maintain the right to request mediation or file a due process complaint, in accordance with the IDEA.

System-based

The MSDE requires the HCPS to provide documentation by December 15, 2011 of the steps taken to ensure that the violation identified in this Letter of Findings does not recur. Upon receipt of this report, the MSDE will verify the data to ensure continued compliance with the regulatory requirements. Further, this Letter of Findings will be shared with the MSDE's Office of Quality Assurance and Monitoring for Continuous Improvement for their consideration during monitoring reviews of the HCPS in the future.

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

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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 complainants and the HCPS have the right to submit additional written documentation to this office, which must be received within fifteen (15) days of the date of this letter, if they disagree with the findings of facts or conclusions reached in this Letter of Findings. The additional written documentation must not have been provided or otherwise available to this office during the complaint investigation and must be related to the issues identified and addressed in the Letter of Findings. If additional information is provided, it will be reviewed and the MSDE will determine if a reconsideration of the conclusions is necessary. Upon consideration of this additional documentation, this office may leave its findings and conclusions intact, set forth additional findings and conclusions, or enter new findings and conclusions. Pending the decision on a request for reconsideration, the school system must implement any corrective actions consistent with the timeline requirements as reported in this Letter of Findings.

Questions regarding the findings, conclusions and corrective actions contained in this letter should be addressed to this office in writing. The complainants 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 FAPE for the student, including issues subject to a State complaint investigation, consistent with the IDEA. The MSDE recommends that this Letter of Findings be included with any request for mediation or due process.

Sincerely,

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

MEF/ch

cc : Sydney L. Cousin
Janet Zimmerman
Ashley Van Cleef
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XXXXXXXXXX
Dori Wilson
Martha J. Arthur
Christine Hartman