



Nancy S. Grasmick  
State Superintendent of Schools

200 West Baltimore Street, Baltimore, MD 21201 410-767-0100 410-333-6442 TTY/TDD

February 28, 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: #11-048

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 January 5, 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 has not ensured that the student has been provided with the supplementary aids and services or accommodations required by the Individualized Education Program (IEP) since the beginning of the 2010-2011 school year, in accordance with 34 CFR §300.101.

**INVESTIGATIVE PROCEDURES:**

1. Ms. Kathy Stump, Education Program Specialist, MSDE, was assigned to investigate the complaint.
2. On January 6, 2011, Ms. Anita Mandis, Section Chief, Complaint Investigation Section, Complaint Investigation and Due Process Branch, MSDE, spoke with the complainant and clarified the allegation to be investigated.

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3. On January 7, 2011, MSDE sent a copy of the complaint, via facsimile, to Ms. Mary Tillar, Director of Special Education, AACPS.
4. On January 14, 2011, MSDE sent correspondence to the complainant that acknowledged receipt of the complaint and identified the allegation subject to this investigation. On the same date, MSDE notified Ms. Tillar of the allegation and requested that her office review the alleged violation.
5. On January 24, 2011, Ms. Stump obtained documentation from the student's education record from the AACPS Central Office.
6. On February 3, 2011, Ms. Stump and Ms. Koliwe Moyo, Education Program Specialist, MSDE, conducted a site visit at XXXXXXXXXXXXXXX (XXXXXX) to review the student's education record, and interviewed the following AACPS personnel:
  - a. Ms. XXXXXX, XXXX Resource Teacher;
  - b. Ms. XXXXXX, Coordinator of Special Education; and
  - c. Ms. XXXXXX, Principal, XXXXX MS.

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

7. On February 17, 2011, MSDE received additional documentation from the student's education record from AACPS, via facsimile.
8. MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings (LOF), which includes:
  - a. Correspondence and attachments from the complainant to MSDE, received January 3, 2011;
  - b. IEP and meeting summary, dated August 18, 2010;
  - c. Draft IEP and meeting summary, dated November 3, 2010;
  - d. IEP team meeting summary, dated December 20, 2010;
  - e. IEP team meeting summary, dated February 9, 2011;
  - f. Electronic mail (e-mail) correspondence between school staff during the 2010-2011 school year;
  - g. Samples of study guides provided to the student during the 2010-2011 school year;
  - h. The home/school communication log for the 2010-2011 school year; and
  - i. Related Service Provider log from the Orientation and Mobility Specialist, dated February 2011.

**BACKGROUND:**

The student is eleven (11) years old and is identified as a student with a visual impairment under IDEA. During the 2009-2010 school year, the student attended XXXXXXXXXXXXXXXXXXXX XXXX (XXX) as a fifth (5<sup>th</sup>) grade student. Since the start of the 2010-2011 school year, the student has attended XXXXXXXXX, where she receives special education and related services. During the period of time addressed by this investigation, the complainant participated in the education decision-making process, and was provided with written notice of IEP team decisions and notice of the procedural safeguards (Docs. a-e, h, and review of audio recording of August 18, 2010 IEP team meeting).

**FINDINGS OF FACT:**

**IEP requirements**

1. The IEP in effect since the start of the 2010-2011 school year, which was developed at an IEP team meeting at XXXXXX on August 18, 2010, requires the following instructional and testing accommodations:
  - a. Use of XXXX materials;
  - b. Verbatim reading of the entire test;
  - c. Recorded books;
  - d. Screen reader for verbatim reading of entire test;
  - e. Notes, outlines, and instructions;
  - f. Scribe;
  - g. Typing on a XXXX;
  - h. Electronic note-takers and word processors;
  - i. Calculation devices;
  - j. Spelling and grammar devices;
  - k. Extended time;
  - l. Multiple or frequent breaks;
  - m. Reduced distractions to the student;
  - n. Reduced distractions to other students; and
  - o. Change in location to increase physical access or to use special equipment within the school building (Doc. b).
  
2. The IEP in effect since the start of the 2010-2011 school year requires the following supplementary aids and services to be provided "periodically:"
  - a. Provide the student with a XXXX copy of her quarterly report card in a "subject/grade" format;
  - b. Study guide provided for chapter tests and quizzes provided to the student to help her study prior to the tests;
  - c. Consultation between the student's teachers and the orientation and mobility specialist; and
  - d. Provide a XXXX copy of the student's completed writing organizers (Doc. b).

3. The IEP in effect since the start of the 2010-2011 school year requires the following supplementary aids and services to be provided “as needed in all classes:”
  - a. Repeat and explain instructions;
  - b. Provide a set of print copies of work sent home;
  - c. Provide verbal descriptions of events, activities, objects, and visual information;
  - d. Accessible software/hardware for school and a printer provided for home by the county; and
  - e. Consultation between the student’s teachers and the teacher of the visually impaired (Doc. b).
  
4. The IEP in effect since the start of the 2010-2011 school year requires the following supplementary aids and services to be provided “daily in all classes:”
  - a. Allow use of manipulatives for instructional purposes;
  - b. Allow extra time for oral responses;
  - c. Provide pre-exposure to materials and concepts;
  - d. Monitor independent work;
  - e. Revise the format of tests (*i.e.*, fewer questions, fill-in-the-blank);
  - f. Alter and/or modify assignments;
  - g. Home/school communication log for reinforcement at home of vision/mobility services;
  - h. Encourage and assist student in opportunities for social interaction; and
  - i. Use 3-D authentic/natural objects, demonstrations, descriptions, raised line/illustrations, tactile graphics, and/or to represent the items/objects (Doc. b).

**Provision of study guides**

5. As stated above, the IEP requires that the student be provided with “study guide[s] . . . for chapter tests and quizzes . . . to help her study prior to the test” (Doc. b)
  
6. Samples of study guides and the home/school communication log, which is a log of communication between the complainant and the student’s teachers and service providers, indicates that the student is being provided with study guides. However, the log also reflects that the complainant believes that study guides are to be provided to the student one week prior to a test or quiz and a copy of the study guide with answers is to be provided to the complainant so that she may assist the student with studying. The communication log also indicates that the complainant believes that study guides are to be provided for assessments even when the students are permitted to use their class notes or their textbooks on a test (Docs. g and h).
  
7. School staff report that the student is only to be provided with a study guide for chapter tests and quizzes prior to the test. School staff report that this requirement does not apply to “pop quizzes,” “open-book” or “open-note” assessments, or other forms of daily summative assessments (Interview with school staff).

**“Pre-exposure” to materials**

8. E-mail correspondence between school staff indicates that the student has been provided with “pre-exposure” to materials and concepts prior to their introduction in class (Doc. f).

**Software/hardware for school and home**

9. The documentation of the August 18, 2010 IEP team meeting indicates that the team determined that the student requires the use of Assistive Technology (AT) devices to assist with reading and with composing written documents, but the IEP does not specify that a particular device is required. The team also determined that while the student requires AT devices, she does not require AT services and there is no documentation that the student has been identified with needs that require the provision of such services (Doc. b).
10. The home/school communication log indicates that the student has been provided with AT devices that assist the student with reading and composing written documents (Doc. h).

**Use of a calculator**

11. The home/school communication log documents that the student was provided with a calculator and that she used it on a math assessment given on October 19, 2010. The documentation indicates that there was discussion between the complainant and school staff clarifying that the use of the calculator would not impact the student’s grade on the math assessment (Doc. h).

**Braille books at school book fairs**

12. The IEP requires that the student be provided with Braille materials during instruction and testing, but there is no documentation that the student is required to receive XXXX books and magazines at school book fairs (Doc. b).

**Modeling for motor activities**

13. The documentation of the August 18, 2010 meeting indicates that team discussed that the student would need adult support “during transition, any visual/tactile activities, assisting her with lunch set-up, to demonstrate physical activities, as well as to repeat and explain instructions as needed” (Doc. b).
14. There is documentation that indicates that the Orientation and Mobility Specialist consulted with the student’s physical education teachers in February 2011, but there is no documentation that the student has been provided with adult support to demonstrate physical activities during physical education or that the student has participated in physical education (Doc. i and review of education record).

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15. There is documentation that the IEP team has convened on several dates during the 2010-2011 school year in order to review the student's program, but it has not completed its review. The documentation indicates that another IEP team meeting is scheduled for March 29, 2011 (Docs. b-e).

### **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 order to ensure that the student receives the services required, the IEP must be written in a manner that is clear to all who are involved in its development and implementation (*Analysis of Comments and Changes, Federal Register*, Vol. 64, No. 48, p.12479, March 12, 1999).<sup>1</sup>

#### **Provision of study guides**

In this case, the complainant alleges that the student has not been provided with study guides (Doc. a). Based on Findings of Fact #2, 5, and 6, MSDE finds that there is documentation that the student is provided with study guides prior to tests and quizzes. However, based on Findings of Fact #6, 7, and 15, MSDE finds that while the complainant has expressed confusion over how this service is to be provided, there is no documentation to date that the team has clarified this issue. Therefore, MSDE finds that the IEP is not written clearly and that a violation has occurred.

#### **"Pre-exposure" to concepts and materials**

In this case, the complainant specifically alleges that the student is being provided with pre-exposure to materials and concepts **after** the introduction of new concepts (Doc. a). Based on Findings of Fact #4 and 8, MSDE finds that there is documentation that the student is provided with pre-exposure to concepts and materials. Therefore, MSDE finds no violation regarding this aspect of the allegation.

#### **Software/hardware for school and home**

In this case, the complainant alleges that the student requires a specific type of AT device, which she alleges has not been provided due to the student's lack of keyboarding skills (Doc. a and interview with complainant). However, based on Findings of Fact #1-3 and 9, MSDE finds that the IEP does not require the student be provided with a specific AT device. Further, based on Findings of Fact #3, 9, and 10, MSDE finds that there is documentation that the student has access to AT devices that do not require keyboarding skills. Therefore, MSDE finds no violation regarding this aspect of the allegation.

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<sup>1</sup> In the 2004 reauthorization of the IDEA, no changes were made to this requirement.

### **Use of a calculator**

In this case, the complainant alleges that the student was not provided with a calculator for use on a math assessment “on or about October 20, 2010” (Doc. a). However, based on Findings of Fact #1 and 11, MSDE finds that there is documentation that the student was permitted to use her calculator when she completed the October 19, 2010 math assessment. Therefore, MSDE finds no violation regarding this aspect of the allegation.

### **XXXXX books at school book fairs**

Based on Findings of Fact #1 and 12, MSDE finds that the IEP in effect since the start of the 2010-2011 school year does not require that the student be provided with XXXX books and magazines at school book fairs. Therefore, MSDE finds no violation regarding this aspect of the allegation.

### **Modeling for motor activities**

In this case, the complainant alleges that she has observed that the student has not been participating in her physical education class (Doc. a). Based on Finding of Fact #13, MSDE finds that the IEP team agreed that the student required adult assistance to, among other things, “demonstrate physical activities.” Based on Finding of Fact #14, MSDE finds that there is no documentation that the student has been provided with such assistance during her physical education class. As a result, MSDE finds that there is no documentation that the student has been participating in her physical education class. Therefore, MSDE finds a violation regarding this aspect of the allegation.

### **CORRECTIVE ACTIONS/TIMELINES:**

#### **Student-specific**

MSDE requires AACPS to provide documentation by April 15, 2011 that immediate steps have been taken to ensure that the student is provided with the accommodations and supplementary aids and services in accordance with the IEP. In addition, MSDE requires AACPS to provide documentation by May 1, 2011 that when the IEP team convenes in March 2011 it has done the following:

1. Revised the IEP to ensure that it is clearly written with respect to how accommodations and supplementary aids and services are to be provided;
2. Determined if the student’s ability to receive educational benefit from her program was adversely impacted as a result of the IEP not being written clearly. If the team determines an adverse impact, then the team needs to determine the nature and amount of *compensatory services*<sup>2</sup> or other remedy necessary to redress the violation.

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<sup>2</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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3. Determined the nature and amount of *compensatory services*<sup>2</sup> necessary to redress the remainder of the violations identified in the LOF.

AACPS must provide the complainant with proper written notice of the determinations made at the IEP team meeting, including a written explanation of the basis for the determinations, in accordance with 34 CFR §300.503. If the complainant disagrees with the IEP team's determinations, she maintains the right to request mediation or file a due process complaint, in accordance with IDEA.

### **School-based**

MSDE requires AACPS to provide documentation by June 1, 2011, of the steps it has taken to determine if the violations identified in the LOF are unique to this case or if they represent a pattern of noncompliance at XXXXXXXX.

Specifically, the school system is required to conduct a review of student records, data, or other relevant information to determine if the regulatory requirements are being implemented and must provide documentation of the results of this review to 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 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 of United States Department of Education, Office of Special Education Programs Memorandum #09-02. Additionally, the findings in the LOF will be shared with MSDE's Office of Quality Assurance and Monitoring for Continuous Improvement for its consideration during present or future monitoring of AACPS.

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, which must be received 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

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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 complainant and the school system maintain the right to request mediation or to file a due process complaint, if they disagree with the identification, evaluation, placement, or provision of a free appropriate public education 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 : Kevin M. Maxwell  
Ellen Meyer  
XXXXXXXXXX  
Martha Arthur  
Kathy Stump