



Lillian M. Lowery, Ed.D.  
State Superintendent of Schools

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March 8, 2013

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

RE: XXX  
Reference: #13-035

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 January 8, 2013, the MSDE received a complaint from Mr. XXXXXXXXXXXX hereafter, “the complainant,” on behalf of the above-referenced student. 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. The MSDE investigated the following allegations:

1. The AACPS has not followed proper procedures when responding to the complainant’s requests for Independent Education Evaluations (IEE) since January 9, 2012, in accordance with 34 CFR §300.502. The complainant’s specific concerns are listed below.
  - a. In response to a request for an independent assistive technology assessment, the school system has not ensured that an IEE has been provided at public expense or initiated a due process hearing to defend the AACPS evaluation; and

- b. In response to a request for independent psychological and educational assessments, the school system has imposed conditions beyond those the public agency uses when it initiates an evaluation.
2. The AACPS has not ensured that correspondence related to the requests for IEEs has been maintained in the student's educational record, in accordance with 34 CFR §300.612 and COMAR 13A.08.02.01.

**INVESTIGATIVE PROCEDURES:**

1. Ms. Koliwe Moyo, Education Program Specialist, MSDE, was assigned to investigate the complaint.
2. On January 9, 2013, the MSDE sent a copy of the complaint, via facsimile, to Ms. Mary Tillar, Director of Special Education, AACPS; and Ms. Alison Steinfelds, Supervisor of Equity Assurance and Compliance Unit, AACPS.
3. On January 17, 2013, Ms. Moyo spoke with the complainant and clarified the first allegation to be investigated. On the same day, the complainant sent electronic mail (e-mail) correspondence to Ms. Moyo regarding the State complaint.
4. On January 18, 2013, the MSDE sent correspondence to the complainant that acknowledged receipt of the complaint and identified the first allegation subject to this investigation. On the same date, the MSDE notified Ms. Tillar of the allegation and requested that her office review the alleged violation. On the same date, Ms. Moyo sent correspondence to the complainant clarifying the procedures of the State complaint investigation process.
5. On January 18, 2013, Ms. Mandis, Section Chief, Family Support and Dispute Resolution Branch, MSDE spoke with the complainant via telephone to discuss the first allegation and request documentation. Subsequent to that telephone conversation, the complainant sent e-mail correspondence to the MSDE staff expressing concerns about a matter not identified for investigation.
6. On January 21, 2013, Ms. Mandis sent e-mail correspondence to the complainant indicating that based on the additional concerns raised a second allegation would be included in the investigation.
7. On February 4, 2013, the complainant sent e-mail correspondence to the MSDE staff requesting an update on the State complaint investigation. On the same date, Ms. Moyo responded to the complainant's request and provided him with correspondence identifying the second allegation under investigation.

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8. On February 5, 2013, Ms. Moyo and Ms. Mandis reviewed the student's educational record at the AACPS Central Office. Ms. Steinfels and Ms. Ruth Avizad, Compliance Specialist, AACPS attended the site visit as representatives of the AACPS and to provide information on the AACPS policies and procedures, as needed. On the same date, Ms. Moyo provided Ms. Steinfels with a copy of the correspondence indicating that a second allegation had been added to the investigation.
9. On February 7, 2013, the complainant provided the MSDE with an audio recording of an Individualized Education Program (IEP) meeting held for the student.
10. On February 11, 2013, Ms. Moyo sent e-mail correspondence to the complainant providing him with an update on the status of the State complaint investigation.
11. On February 21, 2013, the MSDE staff requested that the AACPS staff provide additional documentation from the student's educational record.
12. On February 21, 2013, school staff provided the MSDE staff with the requested documentation from the student's educational record.
13. On February 22, 25, 26, 27, and 28, 2013, the complainant provided the MSDE staff with requested documentation to be considered.
14. On February 22, 25, 26, and 27, 2013, Ms. Mandis corresponded via e-mail with the complainant to provide him with information regarding the status of the State complaint investigation and to request documentation related to the allegations being investigated.
15. On February 26 and 27, 2013, the MSDE staff requested additional information from the AACPS staff.
16. On February 27 and 28, 2013, the AACPS staff responded to the request made by the MSDE staff.
17. On March 4, 2013, the complainant sent e-mail correspondence to the MSDE staff which included additional documentation to be considered.
18. On March 5, 2013, the AACPS staff provided the MSDE staff with additional information, via e-mail correspondence.
19. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
  - a. The AACPS policy for school visitors, issued February 15, 2006;
  - b. Individualized Education Program team meeting notes, dated November 17, 2011;

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- c. Consent to evaluate, dated November 17, 2011;
- d. Educational assessment report, dated December 12 and 15, 2011;
- e. Psychological assessment report, dated December 12 and 13, 2011;
- f. Classroom observation, dated December 13, 2011;
- g. Assistive technology assessment report, dated December 13, 2011;
- h. Communication assessment report, administered December 15 and 19, 2011;
- i. Occupational therapy (OT) assessment report, administered December 16, 2011;
- j. Evaluation report, dated January 9, 2012;
- k. 504 Accommodations Plan (504 Plan); dated January 31, 2012;
- l. Correspondence from the private psychology doctor to AACPS staff, dated August 27, 2012;
- m. E-mail correspondence from the private psychology doctor to school staff, dated September 17, 2012;
- n. E-mail correspondence from the student's mother to school staff, dated September 18 and 22, 2012;
- o. E-mail correspondence between school staff and the complainant, dated September 19, 20, 21, and 23, 2012
- p. Correspondence from the AACPS to the complainant, dated October 8, 2012;
- q. AACPS due process hearing request, dated October 18, 2012;
- r. E-mail correspondence between the independent evaluator and the AACPS staff, dated November 28, 2012;
- s. E-mail correspondence between the independent evaluator and the student's mother, dated December 8 and 19, 2012;
- t. E-mail correspondence between the independent evaluator and the AACPS staff, dated December 12 and 13, 2012;
- u. E-mail correspondence between the independent evaluator and the complainant's attorney, dated December 13, 14, 17, and 18, 2012;
- v. E-mail correspondence from the AACPS staff to the complainant, dated December 20, 2012;
- w. E-mail correspondence between the independent evaluator and the complainant, dated December 22, 2012;
- x. E-mail correspondence between the independent evaluator and the complainant, dated January 2, 2013;
- y. Correspondence and attachments from the complainant to the MSDE, received on January 8, 2013;
- z. Written response to the complaint from the AACPS, dated February 1, 2013;
- aa. 504 plan, dated February 21, 2013;
- bb. E-mail correspondence from the complainant to the MSDE staff, dated February 22, 2013;
- cc. E-mail correspondence from the complainant to the MSDE staff, dated February 25, 2013;
- dd. Due process hearing decision, dated February 25, 2013;

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- ee. E-mail correspondence between the AACPS staff and the MSDE staff, dated February 26, 2013;
- ff. E-mail correspondence between the independent evaluator and the complainant, dated February 26, 2013;
- gg. E-mail correspondence between the AACPS staff and the MSDE staff, dated February 27, 2013;
- hh. E-mail correspondence from the AACPS staff to the MSDE staff, dated March 5, 2013;
- ii. Unsigned copy of the contract agreement between the independent evaluator and the AACPS, undated; and
- jj. The AACPS independent evaluator criteria published in the AACPS Parent e handbook for Special Education.

### **BACKGROUND:**

The student is eleven (11) years old and attends XXXXXX XXXXXX School in Anne Arundel County, Maryland. On January 9, 2012, an evaluation under the IDEA was conducted and the student was not identified with a disability under the IDEA.

The student is identified as a student with a disability under Section 504 of the Rehabilitation Act of 1973 based on medical condition, and has a 504 Accommodations Plan (504 Plan). A 504 plan was developed for the student as a result of environmental, seasonal, and XXXXXX allergies to ensure that the student could participate in school activities without coming into contact with an allergen that could harm him and make him unavailable for learning. During the period of time addressed by this investigation, the student's parents were provided with notice of the procedural safeguards (Docs. b – k, y, and z and audio recordings of the November 17, 2011 and January 9, 2012 IEP team meetings).

### **ALLEGATION 1A: AACPS RESPONSE TO THE REQUEST FOR AN INDEPENDENT ASSISTIVE TECHNOLOGY EVALUATION**

#### **Findings of Facts:**

#### **IDEA Evaluation Conducted on January 9, 2012**

1. On January 9, 2012, the Individualized Education Program (IEP) team reconvened and considered the evaluation data, including the results of the assistive technology (AT) assessment, which was conducted in response to the complainant's request that the student's AT needs be assessed. At that time, the IEP team agreed to obtain information about the student's need for AT as related to concerns about his inattention, difficulty with vision while reading, and difficulty with written language skills (Docs. b, j, and c).

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2. At the IEP team meeting, the team considered the evaluation data which indicates that the student has an “average” cognitive ability and that he performs in the “average” range in all academic areas. The data also indicate that the student has average receptive and expressive language skills (Docs. d - j).
3. The team also considered the results of the AT assessment which was conducted, at the parents’ request, in order to determine whether the student requires AT as a result of fine motor issues that impact his “graphomotor” skills. The results of the AT assessment indicate that the student is able to complete all visual-motor activities in the classroom, is able to produce “legible written work,” and does not demonstrate a need for the use of AT beyond what is used by all students in the general education program (Doc. g).
4. Based on the data, the IEP team determined that the student does not meet the criteria for identification as a student with a specific learning disability. The evaluation report documents that the complainant disagreed with the IEP team’s decision, and that he expressed concern that the evaluation was not comprehensive enough to identify a disability. However, the written documentation of the IEP meeting does not indicate that the complainant requested any Independent Education Evaluations (IEE), on that date (Doc. j).
5. A review of the audio recordings of the January 9, 2012 IEP team meetings also reflects that the complainant did not request an IEE at public expense during the meeting (audio recording of the January 9, 2012 IEP team meeting.).

#### Requests for Independent Educational Evaluations at Public Expense

6. On September 17, 2012, a physician who specializes in the diagnosis and treatment of Attention Deficit Hyperactivity Disorder (ADHD) sent school staff a report of a private medical evaluation that she conducted of the student through a “clinical interview” and with information provided by the student’s parents. The report indicates that the student has been diagnosed with ADHD, anxiety, and depression. It states that the student “has been struggling at school academically and has a difficult time getting homework done,” which is “affecting his self-esteem and his ability to learn in the classroom.” The report also states that the student “most likely needs an IEP to more fully address his disabilities which cannot be sufficiently remediated with accommodations alone,” and contains recommendations for specific accommodations in the classroom and for independent psycho-educational testing to be conducted (Doc. m).
7. On September 18, 2012, school staff requested that the student’s parents clarify whether, based on the recommendations of the private physician, they were requesting another IDEA evaluation or another 504 Plan evaluation (Doc. n).

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8. On September 19, 2012, the complainant clarified with school staff that he and the student's mother were requesting a "full and complete approval of IEEs for all areas of suspected disabilities" since they disagreed with the results of the IDEA evaluation that was conducted (Doc. o).
9. On September 19, 2012, school staff informed the complainant that an IEP team meeting would be scheduled in order to consider his request for an IEE (Doc. o).
10. On September 20, 2012, the complainant advised school staff that he did not wish for the IEP team to convene and that they could either provide him with information on how to obtain an independent education evaluation or file a due process hearing to defend the AACPS evaluation (Doc. o).
11. On September 21, 2012, a different school staff member contacted the complainant, via e-mail correspondence, and requested clarification of whether he was requesting that another 504 Plan team convene to consider recommendations for accommodations that were made by the private physician, or whether he was requesting that the IEP team be convened to consider the additional data provided in the private medical evaluation (Doc. o).
12. On September 23, 2012, the complainant clarified that he was requesting "full and complete Independent Educations" because he "disagreed with the AACPS evaluations." The complainant stated that he requested a list of evaluators approved by the AACPS "for all the suspected impairments, disabilities and assistive technology needs, which the parents identified to the IEP team in writing and before the AACPS conducted the evaluations." In addition, the complainant expressed concern that the IEP team did not obtain all of the data needed in order to conduct a comprehensive evaluation, including medical data from the student's private physicians, and suggested that school staff should have sought his assistance in obtaining medical information (Doc. o).
13. On October 8, 2012, the AACPS notified the complainant that it agreed to fund independent psychological and educational assessments, and provided him with a list of evaluators. However, the AACPS did not indicate whether they would or would not fund any other IEEs (Doc. p).
14. On October 18, 2012, the AACPS filed a due process complaint to defend the AACPS assessments conducted in the areas of speech/language and OT (Doc. q).
15. The AACPS has not responded to the request for an IEE in the area of AT (Docs. p, q and review of the educational record).
16. On February 25, 2013, the Administrative Law Judge issued a decision in the due process case which states that the AACPS OT and speech/language evaluations were appropriate

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to identify the student's needs. The hearing decision specifically indicates that the OT evaluation appropriately assessed the student's fine motor, visual motor, and visual integration skills and that based on the data, the student does not require any modifications or accommodations to his educational program in these areas (Doc. dd).

**Discussion/Conclusions:**

The complainant alleges that in response to his request for an IEE, the AACPS was required to either offer an independent assessment of the student's functional capabilities as they relate to assistive technology or to defend its assessment of the student in this area through due process.

When conducting an IDEA evaluation, the public agency must ensure that the student is assessed in all areas of the suspected disability or that the parent is provided with written notice that the student is not suspected of being a student with a disability (COMAR 13A.05.01.04). The information obtained during an evaluation must be sufficient for the IEP team to determine whether the student meets the criteria for identification as a student with a disability, the student's educational needs, and the special education and related services needed, regardless of whether the need is commonly linked to the student's disability (34 CFR §300.304).

The public agency must ensure that, as part of an evaluation, when warranted by the student's suspected disability, it assesses the student's functional capabilities and whether they may be increased, maintained, or improved through the use of AT. In order to ensure that an evaluation is sufficiently comprehensive, the parent may obtain an independent educational evaluation at public expense each time the public agency conducts an evaluation with which the parent disagrees. If a parent requests an independent educational evaluation at public expense, the public agency must, without unnecessary delay, either ensure that it is provided or file a due process complaint to demonstrate that its evaluation was appropriate (34 CFR §300.502).

If the public agency does not assess the student's functional capabilities as they relate to the need for AT as part of its evaluation, the parent has the right to seek an IEE at public expense specifically, if the parent believes that the evaluation did not appropriately address the student's needs in this area (*Letter to Fisher*, United States Department of Education, Office of Special Education Programs (OSEP), 23 IDELR 565, December 4, 1995 and Analysis of Comments and Changes to the IDEA, *Federal Register*, Vol. 71, No. 156, p. 46690, August 14, 2006).

Based on the Findings of Facts #1 - #9, the MSDE finds that the complainant requested a complete IEE beginning on September 19, 2012. Based on the Findings of Facts #10 -#16, the MSDE finds that the AACPS did not provide the complainant with an IEE of the student's functional capabilities as they relate to the need for AT, and did not request a due process hearing to defend its evaluation in this area. Therefore, the MSDE finds that a violation occurred with regard to this aspect of the allegation.



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However, the ALJ has decided that the student does not require modifications or accommodations to address fine motor skills, which would necessitate the need of AT. Since the purpose of the AT evaluation was to determine whether the student requires AT to perform writing or typing tasks in the classroom, and the ALJ has determined that the student does not display needs in this area, the parties and this office are bound by that decision. Therefore, the MSDE may not require a student-based corrective action with respect to the violation.

**ALLEGATION 1B:                    CRITERIA FOR OBTAINING INDEPENDENT  
PSYCHOLOGICAL AND EDUCATIONAL EVALUATIONS**

**Findings of Facts:**

Limitations on Conducting a Classroom Observation

17. The AACPS has established cost containment criteria that indicate the rates for independent testing in various areas, including psychological and academic testing. The criteria addressing the cost of these assessments also states that these rates may be exceeded if a parent can demonstrate that exceptional circumstances exist (Docs. r - x).
18. The e-mail correspondence from the AACPS staff to the student's mother, dated December 20, 2012, documents that the AACPS offered to pay the proposed independent evaluator double the stated rate to conduct testing of the student's academic performance. The correspondence further documents that the proposed independent evaluator also requested an additional fee for attending IEP team meetings, and that the school system rejected this request because it did not consider such activity to be a necessary component of conducting an independent evaluation (Doc. r).
19. The e-mail correspondence from the AACPS staff to the complainant, dated December 20, 2012, documents that after the first independent evaluator declined to conduct testing of the student's academic performance due to the limitation on the fee, the AACPS subsequently offered double the stated rate to another proposed evaluator, who accepted this rate (Doc. r).
20. The e-mail correspondence from the independent evaluator to the complainant, dated February 26, 2013, documents that after entering into a contract with the AACPS and conducting testing as part of an educational evaluation, the independent evaluator requested an amendment of the contract to add another fee for conducting a classroom observation of the student. The documentation does not indicate that the AACPS refused to permit the independent evaluator to conduct a classroom observation of the student. However, the documentation does indicate that the AACPS refused to increase the dollar amount of the contract following notice from the evaluator of her intent to conduct a classroom observation (Doc. ff).

#### Limitations on When the IEE is Conducted

21. The AACPS requires independent evaluators to enter into a contract with the school system for performing an IEE. The contract agreement requires information, including the name, address, and tax identification number of the evaluator, the service that will be provided, the date and location where the testing has been or will be performed, and the fee for services (Docs. r – y, bb – ff, and interview with AACPS staff).
22. There is no documentation that the AACPS prohibited the complainant from obtaining the IEE and requesting reimbursement (review of the educational record).

#### Limitations on Who Can Conduct the IEE

23. The AACPS criteria for the qualifications of independent evaluators include requirements for training, licensure, certification, and experience. The stated criteria do not prohibit an independent evaluator from conducting more than one test as part of an IEE (Docs. cc and jj).
24. There is no documentation that the basis for the school system's rejection of the complainant's proposal to have the same independent evaluator conduct both the psychological and academic testing was based on the school system's qualification criteria for who can conduct an IEE in these areas (Docs. y and gg).
25. The AACPS reports that the complainant has obtained a neuropsychological assessment and has requested reimbursement from the school system. The AACPS further reports that it will only reimburse the complainant for the costs associated with conducting the cognitive and social-emotional components of the neurological assessment (Docs. gg and hh).
26. The school system indicates that it does not consider the neurological assessment obtained by the complainant an IEE because it did not conduct a neurological assessment as part of its own evaluation of the student. Based upon this, the AACPS has indicated that the independent assessment was not obtained because the complainant disagreed with the school system's assessment (Docs. gg and hh).

#### **Discussion/Conclusions:**

##### **Limitations on Conducting a Classroom Observation**

The complainant alleges that the school system limited his independent evaluators' ability to conduct a classroom observation as a result of cost containment criteria which he asserts is impermissible.

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The regulations neither require nor prohibit a classroom observation by an independent evaluator. However, if the purpose of the evaluation is to determine whether the student is a student with a Specific Learning Disability, an observation is a required part of the evaluation. If the public agency observed the student in conducting its evaluation, the independent evaluator has a right to do so (*Letter to Wessels*, OSEP, 16 IDELR 735, March 9, 1990 and *Letter to Mamas*, OSEP, 42 IDELR 10, May 26, 2004).

When an independent educational evaluation is provided at public expense, the evaluation criteria, including location of the evaluation and qualifications of the evaluator, must be the same as the criteria used by the public agency when it initiates an evaluation (34 CFR §300.502). The public agency may establish criteria to ensure that the cost of an IEE is reasonable. However, when enforcing these criteria, it must allow parents the opportunity to demonstrate that unique circumstances justify an IEE that does not fall within the cost criteria. If the parent cannot demonstrate that the additional cost is justified by unique circumstances, the public agency must pay to the extent of the maximum allowable charge (*Letter to Thorne*, OSEP, 16 IDELR 606, February 5, 1990 and *Letter to Heldman*, OSEP, 20 IDELR 621, July 1, 1993).

Based on the Findings of Facts #19 and #20, the MSDE finds that the school system did not refuse to permit of the independent evaluator to conduct a classroom observation as part of the independent educational evaluation. However, the AACPS did refuse to increase the amount it would pay for the IEE.

Based on the Findings of Facts #17 - #20, the MSDE finds that while the AACPS has established cost containment criteria for an IEE, it implements procedures to consider that the cost criteria be exceeded based on the circumstances of the case. Therefore, the MSDE does not find that a violation occurred to this aspect of the allegation.

### **Limitations on When the IEE is Conducted**

The complainant alleges that the AACPS imposed impermissible conditions on when the IEE could be conducted by requiring that independent evaluator's contract with the school system. He asserts that this limitation resulted in his preferred evaluator becoming unavailable because her schedule filled up during contract negotiations.

Since the manner of payment of an IEE is not addressed by the regulations, it is in the public agency's discretion to determine whether the payment will be made in advance or whether the parents must pay and be reimbursed for the IEE. However, the public agency must ensure that the manner of payment does not effectively deny the IEE (e.g., the public agency cannot require the parent to pay for an IEE and then seek reimbursement for the school system if the parent cannot afford to do so). (*Letter to Heldman*, OSEP, 20 IDELR 621, July 1, 1993).

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Based on the Findings of Facts #21 and #22, the MSDE finds that, while the school system requires an independent evaluator to contract with the school system if it makes direct payment to the evaluator, there is no documentation that the school system has prohibited the complainant from obtaining the IEE and requesting reimbursement. Therefore, there is no documentation that the school system's use of a contract procedure places unreasonable limits on when the IEE is conducted. Therefore, the MSDE does not find that a violation occurred to this aspect of the allegation.

### **Limitations on Who Can Conduct the IEE**

The complainant also alleges that the school system placed limitations on who could conduct the IEE that exceed its stated criteria for conducting an IEE. The complainant specifically asserts that the AACPS would not permit a licensed psychologist who meets the school system's criteria for conducting an educational evaluation to conduct the evaluation because it did not wish to have an evaluator administer more than one assessment as part of the IEE.

As stated above, when an independent educational evaluation is provided at public expense, the evaluation criteria, including location of the evaluation and qualifications of the evaluator, must be the same as the criteria used by the public agency when it initiates an evaluation (34 CFR §300.502). Based on the Findings of Facts #23 - #25, the MSDE finds that there is no documentation that the AACPS rejection of the complainant's proposed independent evaluator was based on the school system's stated criteria.

An IEE must meet the agency criteria that the public agency uses when it initiates an evaluation. This includes reviewing existing evaluation data and input from the parents, identifying the additional data that is needed to determine the scope of the evaluation, and selecting the instruments appropriate to evaluate the student. It would be inconsistent with the IDEA for a public agency to limit the scope of an IEE in a way that would prevent the independent evaluator from determining the scope of the evaluation (*Letter to Fisher*, OSEP, 23 IDELR 565, December 4, 1995 and Analysis of Comments and Changes to the IDEA, *Federal Register*, Vol. 71, No. 156, p. 46690, August 14, 2006).

Based on the Findings of Facts #25 and #26, the MSDE finds that in order to resolve the dispute regarding the IEE, the complainant obtained independent testing and has sought reimbursement from the school system. Based on the Finding of Facts #25 and #26, the MSDE finds that the AACPS has determined it will not reimburse the complainant for the cost of the independent neuropsychological evaluation. Further, based upon the Findings of Facts #23 - #26, the MSDE finds that the AACPS has placed an impermissible restriction on how the IEE is conducted by requiring the independent evaluators to use only those test instruments used by the school system when conducting its evaluation. Therefore, the MSDE finds a violation with respect to this aspect of the allegation.

**ALLEGATION #2: MAINTENANCE OF CORRESPONDENCE IN THE  
STUDENT'S EDUCATIONAL RECORD**

**Findings of Facts:**

27. The AACPS has not maintained all correspondences between the parties regarding the complainant's request for an IEE in the student's educational record (review of the educational record).

**Discussion/ Conclusions:**

All student educational records are to be maintained in accordance with the Family Educational Rights and Privacy Act (FERPA) (34 CFR §§300.610 - .627). In order to ensure proper student records management, local public agencies in the State of Maryland are required to maintain educational records consistent with the Maryland Student Records System Manual (COMAR 13A.08.02.01 and .02).

The Maryland Student Records System Manual requires that, in addition to the documents that must be retained in the educational records for all students, specific information is required to be maintained in the educational records for students with disabilities for a period of six years. This information includes the IEP and any documentation of IEP team meetings, progress reports, assessment reports, and XXXXX XXXXX records (*Maryland Student Records System Manual*, 2011).

In this case, the complainant alleges that the school system is required to maintain correspondence between the parents and school staff about the request for an independent educational evaluation in the student's educational record, but has not done so. Based on the Finding of Fact #27, the MSDE finds that, while the AACPS does not maintain all of the correspondences between the parties about the complainant's request for an independent educational evaluation in the student's educational record, there is no legal requirement to do so. Therefore, this office does not find that a violation occurred with respect to the allegation.

**CORRECTIVE ACTIONS/TIMELINES:**

**Student-based**

The MSDE requires that the AACPS provide documentation by March 31, 2013 that it has either agreed to reimburse the complainant for the cost of the independent neuropsychological evaluation or file a due process complaint to defend its psychological evaluation.

### **System-based**

The MSDE requires the AACPS to provide documentation by June 1, 2013, of the steps taken to ensure that the school system responds to requests for an IEE in accordance with the IDEA and applicable State regulations.

Documentation of all corrective actions 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 the AACPS and the complainant 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 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 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.

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 student's parents 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

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subject to the 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/km

cc : Kevin M. Maxwell  
Alison Steinfelds  
Ruth Avizad  
XXXXXXXXXX  
Dori Wilson  
Anita Mandis  
Martha J. Arthur  
Koliwe Moyo-Stephens