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March 15, 2017

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

RE: XXXXX  
Reference: #17-091

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 27, 2017, the MSDE received a complaint from Ms. XXXXXXXXXXXX<sup>1</sup> and Mr. XXXXXXXXXXXX, XX., hereafter, “the complainants,” on behalf of the above-referenced student. In that correspondence, the complainants alleged that the Anne Arundel County Public Schools (AACPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to the student.

The MSDE investigated the allegations listed below.

1. The AACPS did not follow proper procedures when responding to an April 7, 2016 request for evaluation under the IDEA, in accordance with 34 CFR §300.503 and COMAR 13A.05.01.04 and .12.

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<sup>1</sup>This complainant is the student’s mother (Doc. d).

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XXX

Ms. Bobbi Pedrick

March 15, 2017

Page 2

2. The AACPS did not obtain parental consent before conducting a classroom observation of the student for the purpose of determining eligibility for special education and related services on June 17, 2016, in accordance with 34 CFR §300.300.
3. The AACPS did not ensure that a general education teacher of the student participated in the Individualized Education Program (IEP) team meeting held on June 17, 2016, in accordance with 34 CFR §300.321.
4. The AACPS did not ensure that prior written notice of the decisions made on June 17, 2016 was provided, in accordance with 34 CFR §300.503 and COMAR 13A.05.01.04 and .12.
5. The AACPS has not ensured the provision of access to the results of the Performance Series Assessment in which the student participated without unreasonable delay in response to a request that was made on December 13, 2016, in accordance with 34 CFR §300.613.

**INVESTIGATIVE PROCEDURES:**

1. On January 31, 2017, the MSDE sent a copy of the complaint, via facsimile, to Ms. Bobbi Pedrick, Director of Special Education, AACPS, and Ms. Alison Barmat, Program Manager of Special Education Compliance and Legal Issues, AACPS.
2. On February 2, 2017, Ms. Anita Mandis, Section Chief, Complaint Investigation Section, MSDE, conducted a telephone interview with the student's mother to clarify the allegations to be investigated.
3. On February 6, 2017, Ms. Mandis discussed the allegations being investigated with Ms. Barmat by telephone.
4. On February 9, 2017, Ms. Mandis requested additional information and documents from the student's mother.
5. On February 10, 2017, the student's mother provided the requested information.
6. On March 3, 2017, Ms. Mandis and Ms. Janet Zimmerman, Compliance Specialist, MSDE, conducted a site visit to XXXXXXXXXXXXXXXXXXXX to inspect the student's educational record, and discussed the allegations with the following school staff:
  - a. Ms. XXXXXXXXXXXXX, Principal;
  - b. Ms. XXXXXXXXXXX, Special Education Resource Teacher; and
  - c. Ms. XXXXXXXXX, Assistant Principal.

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XXX

Ms. Bobbi Pedrick

March 15, 2017

Page 3

Ms. Barmat participated in the site visit as a representative of the AACPS and to address any questions regarding the AACPS' policies and procedures

7. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, listed below.
  - a. Report of a classroom observation conducted on May 10, 2016;
  - b. Correspondence from the student's mother to the school system staff, dated May 17, 2016;
  - c. Referral for IDEA evaluation, dated June 3, 2016;
  - d. Section 504 Plan, dated June 3, 2016;
  - e. Report of a classroom observation conducted on June 7, 2016;
  - f. Written summary of an IEP team meeting held on June 17, 2016, generated by the school system (Prior Written Notice document);
  - g. Team Consideration of External Reports form, dated June 17, 2016;
  - h. Student Evaluation Plan form, dated June 17, 2016;
  - i. Written transcription of the June 17, 2016 IEP team meeting generated by the student's mother;
  - j. Correspondence from the student's mother to the school system staff, dated July 28, 2016;
  - k. The AACPS e-Handbook for Special Education, dated September, 2016;
  - l. Written summary of a meeting between the student's mother and the school system staff on October 25, 2016;
  - m. Correspondence between the student's mother and the school system staff, dated December 13, 2016 to January 6, 2017;
  - n. Correspondence between the student's mother and the school system staff, dated January 4, 2017;
  - o. Correspondence from the complainants containing allegations of violations of the IDEA, received by the MSDE on January 27, 2017;
  - p. Correspondence from the student's mother to the MSDE, dated February 9, 2017;
  - q. Written summary of the February 7, 2017 IEP team meeting;
  - r. Summary of Student Performance in the School Setting form, undated; and
  - s. Summary of the April 7, 2016 504 team meeting, generated by the student's mother.

### **BACKGROUND:**

The student is eleven (11) years old and attends XXXXXXXXXXXXXXXXXXXX. She is not identified with a disability under the IDEA. However, she is identified as a student with a disability under Section 504 of the Rehabilitation Act of 1973 as a result of a diagnosed congenital cataract, and has an Accommodations Plan (Docs. d, f, and q).

During the time period covered by this investigation, the student's parents were provided with notice of the procedural safeguards (Doc. i).

**ALLEGATIONS #1 AND #2                      RESPONSE TO AN APRIL 7, 2016 REQUEST FOR AN  
IDEA EVALUATION AND CONSENT FOR  
CONDUCTING AN OBSERVATION**

**FINDINGS OF FACTS:**

1. On April 7, 2016, at a Section 504 team meeting, the student's mother requested that assessments be conducted in order to ensure that the student's needs were properly identified and addressed consistent with the recommendations for accommodations contained in medical reports that she shared with the school staff. However, the student's mother did not specify at that time that she believed that the student is a student with a disability under the IDEA and requires an IEP. The team documented its discussion that observations would be conducted of the student to determine the effectiveness of accommodations being provided in response to the request of the student's mother (Docs. p and s).
2. An AACPS vision resource teacher generated a report that states that on May 10, 2016 she conducted an observation of the student by pulling a group of students, including the student, to the back of the classroom and working with the student using various visual aids (Doc. a).
3. On May 17, 2016, the student's mother expressed concern about the manner in which the observation was conducted, indicating her opinion that this went beyond what she understood would be a passive observation of the student in the classroom setting for which she had provided consent (Doc. b).
4. On June 3, 2016, the student's parents sent a written request for an IDEA evaluation to the school system staff. In that request, the student's parents requested that the school system "comprehensively assess" the student and to provide them with a "prompt request for parental consent to assess within 1 week" (Doc. c).
5. On June 7, 2016, an observation of the student in the classroom was conducted by a special education teacher. The information obtained from the observation was used to provide information for a Summary of Student Performance in the School Setting form. This form states that the classroom observations conducted by both the AACPS vision resource teacher and the special education teacher were conducted for "screening" purposes (Docs. e and r).
6. There is no documentation that separate parental consents were obtained for the May 10, 2016 and June 7, 2016 observations (Review of the educational record).

## **DISCUSSION/CONCLUSIONS:**

### **Allegation #1                      Response to Request for IDEA Evaluation**

Either a parent or a public agency may initiate a request for an evaluation to determine whether a student is a student with a disability requiring special education services under the IDEA. Upon receipt of a written referral, a public agency must promptly request consent to assess a student to determine whether the student requires special education and related services when, prior to referral, the student has not made adequate progress after an appropriate period of time when provided with instruction. If the public agency does not suspect the student of being a student with a disability or decides that no additional data is needed to make the eligibility determination, it must provide the parent with written notice of the decision, consistent with 34 CFR §300.503 (34 CFR §§300.300 and .301, and COMAR 13A.05.01.04 and .12).

Assessment procedures are also used to determine the programming needs of students with disabilities who have Section 504 Plans under the Rehabilitation Act of 1973 (*Yuba City (CA) Unified School District*, 22 IDELR, 1148 (OCR 1995)).

The IDEA regulations at 34 CFR §300.503 require that notice include a description of the action, and explanation of why the public agency is taking or refusing to take the action, a description of the data used as a basis for the decision, and a description of other options that were considered (34 CFR §300.503).

In this case, the complainants allege that, because the student's mother requested assessments on April 7, 2016, the school system was required to treat it as a request for an IDEA evaluation, and to either obtain her consent to conduct an evaluation or provide her with written notice of the decision not to conduct an evaluation (Docs. o and p).

Based on the Findings of Facts #1 and #4, the MSDE finds that the mother's request for assessments at a 504 team meeting did not provide the school system with sufficient notice that she wished to have an IDEA evaluation conducted. Thus, this office finds that the AACPS was not required to proceed with an IDEA evaluation or to provide prior written notice of a refusal to conduct an IDEA evaluation at that time. Therefore, no violation is found with respect to the allegation.

### **Allegation #2                      Obtaining Parental Consent**

A public agency proposing to conduct an initial evaluation to determine if a student is a student with a disability under the IDEA must, after providing written notice of the decision, obtain informed consent from the parent prior to conducting the evaluation (34 CFR §300.300).

The screening of a student by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation is not considered an evaluation for eligibility for special

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Ms. Bobbi Pedrick

March 15, 2017

Page 6

education and related services. An evaluation refers to an individual assessment to determine eligibility for special education and related services, as opposed to a screening to develop teaching strategies, which is typically a relatively simple and quick process that can be used with groups of students (34 CFR §300.302 and Analysis of Comments and Changes to the IDEA regulations, Federal Register, Vol. 71, No. 156, August 14, 2006, p. 46639).

In this case, the complainants allege that another consent was required to be obtained for a classroom observation following the June 3, 2016 referral for an IDEA evaluation (Doc. o).

Based on the Findings of Facts #1 - #5, the MSDE finds that the observations conducted in May and June 2016 were not for the purpose of determining the student's eligibility under the IDEA, but for reviewing the effectiveness of the accommodations being provided through a Section 504 Plan. Therefore, this office finds that there was no requirement to obtain written parental consent to conduct those observations.

Based on the Findings of Facts #1 - #6 above, the MSDE further finds that there is evidence that the student's mother was in full agreement with having observations and other assessments conducted. Therefore, this office does not find that a violation occurred.

**ALLEGATION #3**

**PARTICIPATION OF A GENERAL EDUCATION TEACHER  
OF THE STUDENT IN THE JUNE 17, 2016 IEP TEAM  
MEETING**

**FINDINGS OF FACTS:**

7. On June 17, 2016, the AACPS convened an IEP team to consider whether the student was suspected of being a student with a disability under the IDEA in response to a referral for evaluation that was made by the student's parents. At the start of the meeting, a former general education teacher of the student was in attendance. However, this staff member left the meeting before its completion, despite the objection of the student's mother, due to a conflict in the teacher's schedule. The IEP team discussed that another general education teacher, who had conducted an assessment of the student, remained at the meeting. At the conclusion of the meeting, the IEP team determined that the student was not suspected of being a student with a disability under the IDEA (Docs. f, i, and audio recording of the IEP team meeting).
8. On October 25, 2016, the student's mother met with members of the school system and expressed her concern that the staff member who was assigned to serve as the general education teacher had been excused from the June 17, 2016 IEP team meeting. It was discussed that sometimes general education teachers are permitted to leave IEP team meetings prior to the completion of the meetings, unless the parent disagrees, due to the need to ensure

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XXX

Ms. Bobbi Pedrick

March 15, 2017

Page 7

that there are teachers available for classroom instruction. It was also discussed that the student's mother had recently made another referral for an IDEA evaluation (Doc. l).

9. On February 7, 2017, the AACPS convened another IEP team that included two general education teachers of the student, in response to another referral for an IDEA evaluation made by the student's parents. The IEP team decided that the student is not suspected of having a disability under the IDEA (Doc. q).
10. The AACPS e-Handbook for Special Education reflects that the school system discourages the practice of entering into agreements with the parents to excuse members of the IEP team whose area of the curriculum is not being discussed. Instead, if unforeseen circumstances arise, the AACPS requires the school staff to attempt to secure another individual of the same profession or arrange for the invited member to participate by teleconference (Doc.k ).

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

Under the IDEA, a group of qualified professionals and the parent is required to determine initial eligibility under the IDEA, unless it is determined appropriate to have the full IEP team make the determination. If a student is identified with a disability under the IDEA, the full IEP team must develop the IEP (34 CFR §300.324).

In Maryland, the public agency may determine whether the student is suspected of being a student with a disability and an evaluation will be conducted. The public agency may also determine whether additional data is needed to make the eligibility determination if the student is suspected of being a student with a disability (COMAR 13A.05.01.04). However, the full IEP team must determine initial eligibility (COMAR 13A.05.01.06 and .07).

The IDEA states that the public agency must ensure that the IEP team for each child with a disability includes a general education teacher of the student if the student is, or may be, participating in the general education environment. Decisions as to which particular teachers are members of the IEP team are left to the public agency based on the needs of the student [Emphasis added] (34 CFR §300.321 and Analysis of Comments and Changes, Federal Register, Vol. 71, No. 156, August 14, 2006, p. 46670).

A required member of an IEP team may be excused from attending a meeting, in whole or in part, when the meeting involves a modification to or discussion of the member's area of the curriculum or related services if the parent, in writing, and the public agency consent to the excusal and the member submits to the parent and the IEP team, input into the development of the IEP prior to the meeting. If the member's area is not being modified or discussed, the member can be excused if the parent and the public agency agree, in writing [Emphasis added] (34 CFR §300.321).

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XXX  
Ms. Bobbi Pedrick  
March 15, 2017  
Page 7

In this case, the complainants allege that the AACPS was required to ensure that a general education teacher participated in the determination of whether the public agency suspected a disability and would conduct an IDEA evaluation. The complainants further allege that it is impermissible for the school system to replace a teacher whose area is not being discussed with another teacher to serve in the same role if unforeseen circumstances result in the designated staff member not being able to attend an IEP team meeting (Doc. o).

Based on the Finding of Fact #7, the MSDE finds that, because the school system determined that it was appropriate to convene the IEP team to determine whether the student should be suspected of being a student with a disability, the team making that decision was required to include a general education teacher of the student.

Based on the Finding of Fact #7, the MSDE finds that a general education teacher of the student did not participate in the entire June 17, 2016 IEP team meeting, and that the student's parents did not agree to excuse her from the IEP team. Therefore, this office finds that a violation occurred with respect to the allegation.

Notwithstanding the violation, based on the Finding of Fact #9, the MSDE finds that the IEP team has subsequently reconvened with the participation of a general education teacher of the student and determined that the student is not suspected of being a student with a disability under the IDEA. Therefore, no student-specific corrective action is required to remediate the violation.

With respect to the assertion that the AACPS is not permitted to decide that one teacher will replace another teacher whose area is not being discussed at an IEP team meeting or that the parents and school-based members of an IEP team cannot agree to the dismissal of such a team member prior to the completion of the meeting, the MSDE finds that there is no legal authority for such an interpretation of the regulations. Therefore, based on the Findings of Facts #8 and #10, this office does not find a violation with respect to the AACPS procedures.

**ALLEGATION #4                      PRIOR WRITTEN NOTICE OF THE DECISIONS MADE  
ON JUNE 17, 2016**

**FINDINGS OF FACTS:**

11. The Prior Written Notice document that was completed for the June 17, 2016 IEP team meeting describes the private assessment data considered by the team, which was provided by the student's parents, and the concerns of the parents. It states that, because a disability was not suspected after review of the existing data, including information obtained from curriculum-based assessments, observations, and interventions provided in the general education program, the team was not recommending that an IDEA evaluation be conducted. The documents also reflect the decision that an assistive technology screening would be

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Ms. Bobbi Pedrick

March 15, 2017

Page 9

conducted by the student's Section 504 team and that no other options were considered (Docs. f, g, and h).

12. The student's mother requested that the Prior Written Notice document include information about each recommendation for accommodations contained in the private assessment reports and the team's decision to either accept or reject those recommendations. The school system staff refused the request, explaining that a discussion of each of the recommendations for accommodations contained in the private medical reports would only need to be documented if an IEP was being developed (Docs. g, h, j, n, and review of audio recording of the IEP team meeting).

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

The public agency must provide parents with written notice prior to any proposal or refusal to initiate or change the identification, evaluation, or educational placement or the provision of a Free Appropriate Public Education (FAPE) to a student with a disability. This notice must include a description of the action, and explanation of why the public agency is taking or refusing to take the action, a description of the data used as a basis for the decision, and a description of other options that were considered (34 CFR §300.503).

In this case, the complainants allege that the parents were not provided with proper prior written notice because the document did not detail the decisions made with respect to each of the recommendations contained in the private medical reports (Doc. o).

Based on the Findings of Facts #11 and #12, the MSDE finds that the IEP team did not review the private medical reports for the purpose of considering whether recommended accommodations would be provided, but rather for the purpose of considering whether they contained information that would cause the team to suspect that the student has a disability and required an evaluation under the IDEA. Based on those Findings of Facts, the MSDE further finds that the IEP team decided that the Section 504 team would reconvene after additional data was obtained in order to ensure that the Section 504 Plan properly addresses the student's need for accommodations.

Based on the Finding of Fact #11, the MSDE finds that the Prior Written Notice document describes the decision that an IDEA evaluation was not needed, the data used as a basis for the decision, and information about other options that were considered. Because the IEP team decided that an IDEA evaluation was not required, there was no requirement to document consideration of each recommendation contained in the medical reports. Therefore, this office does not find that a violation occurred with respect to the allegation.

**ALLEGATION #5                      ACCESS TO THE RESULTS OF THE PERFORMANCE SERIES  
ASSESSMENT**

**FINDINGS OF FACTS:**

13. On December 13, 2016, the student's mother requested data from the web-based Performance Series assessment in which the student participated during the first week of December, 2016. Scores from the assessment are used in the process of identifying students who will be placed in the gifted and talented program. The school system staff responded that the scores from the assessment were not anticipated to be released until March 2017. The student's mother asserted that the test results are available for immediate viewing upon completion of the assessment, and explained that she intended to use the documents at an IEP team meeting scheduled for February 7, 2017 in order to demonstrate that the student had difficulty accessing the assessment due to the small font size of the test (Doc. m).
14. The Scantron Performance Series website states that educators can view the results of the assessments immediately without having to wait weeks or months (<http://www.performanceseries.com>).
15. On January 6, 2017, the school staff sent the student's mother correspondence indicating that, as had previously been explained to her, assessment scores for all students participating in the assessment must be verified and validated prior to the release of information on any of the student's scores (Doc. m).
16. When the IEP team met on February 7, 2017, the team considered information from the student that she requires enlarged font size for assignments that are 3 pages or longer (Doc. q).

**DISCUSSION/CONCLUSIONS:**

The IDEA requires that each public agency permit parents to inspect and review any educational records regarding their children that are "collected, maintained, or used by the agency," consistent with the requirements of the Family Educational Rights and Privacy Act (FERPA) (34 CFR §99.10 and 34 CFR §300.613). The public agency must comply with a request for access to the educational record without unnecessary delay, and before any meeting regarding an IEP, or any due process hearing or resolution session. However, in no case should the response be provided more than forty-five (45) days after the request has been made (34 CFR §300.613).

Completed test instruments or question booklets containing information that identify a student constitute education records which parents have the right to inspect. If the public agency believes that providing a parent with a copy of a certain education record would violate any copyright laws or jeopardize test security, it could provide the opportunity to inspect and review the record without

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Ms. Bobbi Pedrick  
March 15, 2017  
Page 11

providing the parent with copies of the record (*FERPA Memorandum: Access to Test Protocols and Test Answer Sheets*, United States Department of Education, Family Policy Compliance Office, October 2, 1997).

In this case, the complainants allege that the parents have not been provided with documents requested from the student's educational record within the required timelines, and that as a result, the parents were not able to fully participate in IEP team meeting held on February 7, 2017 (Doc. o).

Based on the Findings of Facts #13 - #16, the MSDE finds that, while the school staff did not disclose the data because it had not been verified and validated and thus may not be meaningful, the school staff were required to provide access to that data upon request, and that a violation occurred.

Notwithstanding the violation, based on the same Findings of Facts, the MSDE finds that the IEP team was able to consider the information that the parents intended to demonstrate through the requested records from another source. Therefore, this office finds that the violation did not negatively impact the parents' ability to participate in the IEP team meeting held after the request for documents was made.

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

#### **Student-Specific**

The MSDE requires the AACPS to provide documentation by April 1, 2017 that the parents have been provided with access to the student's test scores from the Performance Series assessment.

#### **School-Based**

The MSDE requires the AACPS to provide documentation by the start of the 2017-2018 school year of the steps taken to ensure that the XXXXXXXXXXXXXXXXXXXXXXXXXXXX staff comply with the requirements for excusing required IEP team members from IEP team meetings and providing access to educational records.

Documentation of all corrective action taken is to be submitted to this office to: Attention: Chief, Family Support and Dispute Resolution Branch, Division of Special Education/Early Intervention Services, MSDE.

### **TECHNICAL ASSISTANCE:**

Technical assistance is available to the parties by contacting Dr. Nancy Birenbaum, Compliance Specialist, Family Support and Dispute Resolution Branch, MSDE at (410) 767-7770.

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Ms. Bobbi Pedrick

March 15, 2017

Page 12

Please be advised that the AACPS and the complainants 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 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 within the timelines 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 FAPE for the student, including issues subject to this 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/am

c: George Arlotto  
Alison Barmat  
XXXXXXXXXXXX  
Dori Wilson  
Anita Mandis  
Nancy Birenbaum