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May 11, 2017

Ms. Jessica Williams  
Education Due Process Solutions, LLC  
711 Bain Drive #205  
Hyattsville, Maryland 20785

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

RE: XXXXX  
Reference: #17-090

Dear Parties:

The Maryland State Department of Education (MSDE), Division of Special Education/Early Intervention Services (DSE/EIS), 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. Jessica Williams, hereafter, “the complainant,” on behalf of the above-referenced student, and her mother, Ms. XXXXXXXXXXXX. 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 student.

The MSDE investigated the following allegations:

1. The AACPS has not ensured that the Individualized Education Program (IEP) has addressed all of the student’s needs, in accordance with 34 CFR §§300.101, .320 and .324.
2. The AACPS has not ensured that proper procedures were followed when conducting a reevaluation of the student, in accordance with 34 CFR §§300.303 - .306.

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**INVESTIGATIVE PROCEDURES:**

1. On January 30, 2017, the MSDE provided a copy of the State complaint, by facsimile, to Ms. Bobbi Pedrick, Executive Director of Special Education, AACPS, and Ms. Alison Barmat, Program Manager of Legal Issues and Compliance, AACPS.
2. On February 8, 2017, Ms. K. Sabrina Austin, Education Program Specialist, MSDE, conducted a telephone interview with the complainant to clarify the allegations to be investigated.
3. On February 14, 2017, the MSDE sent correspondence to the complainant that identified the allegations subject to this investigation. On the same date, the MSDE notified the AACPS of the allegations and requested that the AACPS review the alleged violations.
4. On February 17, 2017, and March 7 and 8, 2017, the complainant provided documentation to the MSDE for consideration.
5. On February 21, 2017, and March 2 and 3, 2017, the MSDE requested the AACPS to provide documentation for consideration.
6. On February 27, 2017, and March 2, 3, 6 - 10, 13, 15 and 20, 2017, the AACPS provided documentation to the MSDE for consideration.
7. On March 2, 2017, Ms. Austin conducted a review of the student's educational record at the AACPS Central Office, and requested the AACPS to provide documentation for consideration. Ms. Barmat was present during the review.
8. On March 10, 2017, Ms. Austin and Ms. Sharon Floyd, Education Program Specialist, MSDE, conducted a site visit at the AACPS Central Office and interviewed the following school system staff:
  - a. Ms. XXXXX, Special Education Department Chairperson, XXXXX School;
  - b. Ms. XXXXXXXXXXXX, Special Education Department Chairperson, XXXXXXXXXXXX School;
  - c. Mr. XXXXXXXXXXX, Special Educator, XXXXXXXXXXX School; and
  - d. Ms. XXXXXXXXXXX, Special Education Department Chair, XXXXXXXXXXX School.

Ms. Barmat participated in the site visit as a representative of the AACPS and to provide information on the school system's policies and procedures, as needed.

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9. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
- a. IEPs dated November 6, 2015, October 19, 2016, and December 13, 2016;
  - b. Prior Written Notices, dated September 18, 2015, November 6, 2015, October 19, 2016, and December 13, 2016;
  - c. Referral recommending an evaluation, dated August 27, 2015, and Student Evaluation Plan, dated September 18, 2015;
  - d. The student's enrollment history, from August 2012 to December 2016;
  - e. Electronic mail (email) communications between the school system staff and the parent, from September 2016 to March 2017;
  - f. The student's report cards for the 2015 - 2016 and 2016 - 2017 school years;
  - g. Reports of the student's progress towards mastery of the IEP goals, dated April 11, 2016, June 16, 2016, November 10, 2016, and January 20, 2017;
  - h. Correspondence from the AACPS to the parent, dated November 30, 2016 as revised on December 5, 2016, authorizing the student's administrative transfer to XXXXXXXX School;
  - i. The student's incident referrals in April 2016, May 2016 and March 2017;
  - j. Handwritten samples of the student's work produced during the 2016 - 2017 school year;
  - k. The student's interim grade report for the third (3rd) quarter of the 2016 - 2017 school year;
  - l. The school staff's service log of counseling services, from September 2016 to March 2017;
  - m. The school staff's notes from a parent teacher conference, dated January 4, 2017;
  - n. Consideration of External Report form, dated December 13, 2016;
  - o. The report of an independent psychological assessment conducted by Kennedy Krieger Institute on September 27, 2016; and
  - p. Correspondence from the complainant alleging violations of the IDEA, received by the MSDE on March 2, 2017.

**BACKGROUND:**

The student is sixteen (16) years old, is identified as a student with a Specific Learning Disability under the IDEA, and has an IEP that requires the provision of special education and related services.

At the start of the investigation period, the student was in the eighth (8th) grade and attending XXXXXXXXXX School. She began the 2016 - 2017 school year attending XXXXXXXXXX School. However, since December 2016, the student has been attending XXXXXXXXXX School as a result of an administrative transfer (Docs. a, d and h).

During the period of time addressed by this investigation, the student's mother participated in the education-making process and was provided with written notice of the procedural safeguards (Docs. a and b).

### **FINDINGS OF FACTS:**

1. In January 2016, the student was in the eighth (8th) grade and was attending XXXXXXXXXX School. The IEP in effect at that time was developed on November 6, 2015, following a reevaluation which had been conducted in order to obtain current information about the student's academic performance in reading, math, and written expression<sup>1</sup> (Docs. a, c and d).
2. The November 2015 IEP includes the following information about the student's current functioning and levels of performance, based on the results of the most recent evaluation:
  - When tested for general intellectual ability, the student scored in the "lower extreme to below average range" in the areas of short term memory, planning ability and executive functioning, visual processing, and learning skills.
  - When self reporting, the student's responses indicate "very superior" skills in flexibility, organization and planning.
  - The student's mother reports that, "occasionally," the student's problems "seriously" affect her functioning in the academic and social settings.
  - In reading, the student is functioning at the third (3rd) grade instructional level. Although her basic reading skills are in the "average" range, her reading comprehension is in the "very low" range.
  - In math, the student is performing at the sixth (6th) grade instructional level.
  - In written expression, the student is performing at the third (3rd) grade instructional level (Doc. a).
3. The November 2015 IEP identifies that the student's disability affects her reading, math and written expression, and states that she "has difficulty with her ability to focus and attend to instruction, and comprehending material." The November 2015 IEP does not indicate that the student has needs in the areas of fine motor skills or speech and language (Doc. a).
4. In order to address the student's needs, the November 2015 IEP includes academic goals in reading, math, and written expression. It also requires that the student be provided with accommodations and supplementary supports to address her difficulty with processing information and focus, including extended time, preferential seating, checks for understanding, monitoring independent work, and altered assignments. The IEP requires ten (10) hours per week of specialized instruction in language arts, math, science and social studies in the general education classroom. The specialized instruction is to be provided by a special education teacher and a general education teacher (Doc. a).

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<sup>1</sup> The student previously attended private school (Doc. b).

5. The student was involved in a disciplinary incident in April 2016 due to insubordination, and in May 2016 due to leaving the classroom without permission. The student received disciplinary consequences which did not result in her removal from school. There is no documentation of any other disciplinary incidents or referrals during the 2015 - 2016 school year (Doc. i and review of the student's educational record).
6. The student's 2015 - 2016 report card documents that she earned passing grades in each core academic class during the third (3rd) and fourth (4th) quarters. The IEP progress reports completed after the third (3rd) and fourth (4th) quarters of the 2015 - 2016 school year also reflect that the student was making sufficient progress towards mastery of all of the IEP goals (Docs. d and f).
7. There is no documentation that, between January 2016 and the end of the 2015 - 2016 school year, the school staff or the parent expressed any concerns about the student's fine motor skills related to handwriting, her behavior, or her speech and language skills (Review of the student's educational record and interview with the school system staff).
8. The student began the 2016 - 2017 school year in the ninth (9th) grade and attending XXXXXXXXXX School (Doc. d).
9. In early September 2016, the school staff sent an email to the parent to inform her that the student was talking through class and during instructions, and that her talking was having a negative impact on her performance. The school staff requested the parent to speak with the student "about staying on task during class so that she can begin to improve her grade" (Doc. e).
10. On October 19, 2016, the IEP team convened to conduct the annual review of the student's education program. The IEP discussed that, while the student understands most of the content, her reading ability affects her understanding "a bit." The IEP team updated the student's current levels of functioning in reading, math and writing to reflect her functioning at the fifth (5th) grade instructional level in each area (Docs. a and b).
11. The IEP team also discussed that the student "sometimes talks in class," and is "struggling" with consistently paying attention, and that multiple prompts and redirection are required for her to focus on the instruction. They also discussed that the student's success in the classroom is based her attention, and that when she is in groups that include friends, "she is very off task, and often does not complete a lot of work."

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12. At the October 2016 IEP team meeting, the IEP team identified that attention and executive functioning are areas affected by her disability. The IEP team revised the IEP to include a goal to address these newly identified areas of need (Doc. b).
13. There is no documentation that, at the October 2016 IEP team meeting, the parent or the school staff expressed any concerns about the student's fine motor needs relating to handwriting, speech and language skills, or behavior, other than attention and executive functioning (Doc. b).
14. On October 28, 2016, the school staff sent an email to the parent reporting that the student's talking was causing a distraction to herself and other students (Doc. e).
15. The student's report card reflects that she earned passing grades in each of the core academic classes during the first (1st) quarter of the 2016 - 2017 school year. The IEP progress reports completed after the first (1st) quarter of the 2016 - 2017 school year also document that the student was making sufficient progress towards mastery of all of the IEP goals (Docs. d and f).
16. On November 29, 2016, the parent provided the school staff with the report of an independent psychological assessment that she privately obtained (Docs. n and o).
17. On November 30, 2016, following an incident that occurred at XXXXXXXXXX School, the school system granted the parent's request for an administrative transfer permitting the student to attend XXXXXXXXXX School (Doc. h and interview with the parties).
18. On December 13, 2016, the IEP team convened to consider the report of the independent psychological assessment that the parent privately obtained, and to discuss the student's transition to XXXXXXXXXX School (Doc. b).
19. The report of the independent psychological assessments documents that the student was referred for the private evaluation by her family "due to [her] difficulties with attention, memory, social skills, mood and learning." The report states that the student takes medication for Attention Deficit Hyperactivity Disorder (ADHD), a diagnosis that was based on the results of a previous psychological evaluation that was conducted by the evaluator's office in 2011. The report also reflects the parent's statement that the student's "teachers report that the student is not focused, talks too much, is late for class" (Doc. o).
20. The report of the independent psychological assessment includes the following results and conclusions by the evaluator:
  - The student's full scale IQ is 70, placing her in the "very low range" of functioning.
  - The student earned standard scores of 65 in reading comprehension representing functioning in the "extremely low range", 92 in math computation representing

functioning in the “average range,” and 87 in written expression representing functioning in the “low average range.”

- The student’s writing was “legible but revealed mild alignment problems.”
- The student performed in the “extremely low range” on a copying task involving visual-motor integration, as well as on tasks measuring processing speed that required visual-motor coordination, psychomotor speed and accuracy.
- The student performed in the “very low range” on tasks measuring knowledge of social conventions, social judgement and commonsense reasoning.
- In the area of executive functioning and general behavioral functioning, the parent’s ratings indicate that the student is functioning in the “clinically significant” range when measuring attention, leadership skills, and daily living activities, in the “clinically elevated” range when measuring inhibition, self-monitoring, shift, and working memory, and in the “at risk” range when measuring hyperactivity, conduct problems and social skills (Doc. o).

21. The independent evaluator diagnosed the student with ADHD, graphomotor disorder, rule out adjustment disorder with anxiety, and a “Specific Learning Disability.” The evaluator made several recommendations, including, specifically, that the student be provided with “accommodations typically afforded to students with attentional and graphomotor disorders,” and “efforts” to improve the student’s adaptive behavioral skills. In addition, the evaluator noted that the student “should be provided with supervision by trusted adults in all settings so that she is not victimized or taken advantage of” (Doc. o).
22. Accommodations and supports that may address graphomotor disorders include access to a computer or other assistive technology device for writing, use of a tape recorder for note taking, provision of teacher notes or outlines of class instruction, extra time for test taking, reduced writing demands, and opportunities to respond orally (The LD Resource Guide: Accommodations, Learning Strategies, Assistive Technology and Universal Design for Instruction, July 2008, and apraxia-kids.org).
23. There is no documentation that the IEP team considered the types of accommodations provided to students with graphomotor disorders, and the IEP developed at the December 2016 IEP team meeting does not include such accommodations, as recommended by the independent evaluator. There is also no documentation that any concerns about the student’s fine motor skills or handwriting were expressed by the parent or the school staff at the December 2016 IEP team meeting (Docs. a and b).
24. Based on the review of the report of the independent psychological assessment, the IEP team determined that the student has newly identified needs in the area of social skills, and revised the IEP to document that the student’s social skills are affected by her disability. To address the student’s needs in this area of difficulty with navigating

complex social situations, the IEP team revised the IEP to include a social skills goal and psychological services as a related service. The IEP team also determined that the student requires the additional supplementary support of daily adult support and supervision

- during hallway transitions, lunch, and other unstructured times to monitor her activities and intervene if she does not follow her schedule or behavioral expectations (Docs. a and b).
25. The prior written notice document from the December 13, 2016 IEP team meeting documents that the IEP team discussed and determined that no additional assessments were needed following the review of the report of the independent psychological assessment (Doc. b).
  26. On December 16, 2016, the student began attending XXXXXXXXXX School. Due to the student's "poor decision making skills during transitions and free time," the XXXXXXXXXX School staff developed a "plan of supervision" to monitor the student during transitions, lunch, arrival, and dismissal. There is documentation that the plan has been in place since the student's arrival at XXXXXXXXXX School<sup>2</sup> (Docs. d, e and h, and interview with the school system staff).
  27. On January 4, 2017, the school staff and the parent met for a parent-teacher conference to discuss the student's transition to XXXXXXXXXX School. They discussed that the student had "settled in," was "doing well," completes assignments, and no concerns were reported about her behavior. They also discussed that there is a person responsible for supporting the student's transitioning between classes, and that the student and the school psychologist meet each week for thirty (30) minutes (Docs. a and m).
  28. The student earned passing grades in each of the core academic classes during the second (2nd) quarter of the 2016 - 2017 school year. The IEP progress reports developed after the second (2nd) quarter of the 2016 - 2017 school year document that the student was making sufficient progress towards mastery of all of the IEP goals. The reports state that the student attends class, is on time, and starts a task with one (1) or two (2) teacher prompts. They also reflect that while the student follows classroom rules and procedures with minimal teacher prompts, she has demonstrated "some incidents of non-compliance during less desired activities" but is able to comply with prompting and redirection (Docs. f and g).
  29. The student's third (3rd) quarter interim report for the 2016 - 2017 school year reflects that she is earning passing grades in all core academic classes with the exception of science (Doc. k).
  30. To date, the student has received one (1) disciplinary referral during the 2016 - 2017 school year, in March 2017, due to misuse of technology, which did not involve her removal from school. There is no documentation of any other disciplinary referral since the start of the 2016 - 2017 school year (Doc. i).

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<sup>2</sup> There is also documentation that the student has expressed displeasure and demonstrated some avoidance behaviors as a result of the close monitoring required by the supervision plan (Doc. e and interview with the school system staff).

31. A review of the samples of the student's written work reflects that her handwriting is neat and legible, and that she uses appropriate spacing between words and letters in her writing (Doc. j).
32. There is documentation that, between December 2016 and March 2017, the student met with the school psychologist for thirteen (13) sessions of individual counseling, and that peer relations and responding to peer conflict were frequent topics of discussion during the counseling sessions (Docs. e and l).
33. There is no documentation that, since the start of the 2016 - 2017 school year, the school system staff or the parent have expressed any concerns about the student's fine motor skills as relates to her handwriting, or her speech and language skills (Review of the student's educational record and interview with the school system staff).

## **DISCUSSION/CONCLUSIONS:**

### **Allegation #1: Addressing the Student's Needs**

In order to provide a student with a Free Appropriate Public Education (FAPE), the public agency must ensure that an IEP is developed that addresses all of the needs that arise out of the student's disability that are identified in the evaluation data. In developing each student's IEP, the public agency must ensure that the IEP team considers the strengths of the student, the concerns of the parents for enhancing the education of the student, the results of the most recent evaluation, and the academic, developmental, and functional needs of the student. If a student's behavior impedes the student's learning, the team must consider interventions, supports, and strategies to address the behavior (34 CFR §§300.101, .320, and .324).

In this case, the complainant alleges that the IEP does not address the student's social, emotional and behavior needs, fine motor needs related to writing, and speech and language needs.

#### **Fine Motor Needs Relating to Handwriting**

Based on the Findings of Facts #6, #7, #13, #15, #23, #25, #28, #29, #31 and #33, the MSDE finds no violation with respect to this aspect of the allegation.

#### **Speech and Language Needs**

Based on the Findings of Facts #6, #7, #13, #15, #25, #28, #29 and #33, the MSDE finds no violation with respect to this allegation.

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### Behavioral Needs

Based on the Findings of Facts #10 - #12, #14, #16, #19 - #21, and # 24, the MSDE finds that, in October 2016 and December 2016, the IEP team convened, and identified that the student has behavioral needs relating to attention and executive functioning, and social skills, and revised the IEP to address these newly identified areas of behavioral need. Therefore, the MSDE finds no violation with respect to this aspect of the allegation.

### **Allegation #2: Reevaluation**

When conducting a reevaluation, the public agency must ensure that the student is assessed in all areas related to the suspected disability, and that the reevaluation is sufficiently comprehensive to identify all of the student's special education and related services needs, whether or not commonly linked to the disability category in which the student has been classified (34 CFR §300.304).

In this case, the complainant alleges that the reevaluation was not sufficiently comprehensive to identify all of the student's special education and related services needs.

Based on the Findings of Facts #10 - #12, the MSDE finds that, in October 2016, the IEP team identified that the student has needs in the area of attention and executive functioning and revised the IEP to address this area of need. Based on the Findings of Facts #18 - #21 and #24, the MSDE finds that, in December 2016, the IEP team identified that the student has needs in the area of social skills, and revised the IEP to address this area of need.

Based on the Findings of Facts #1 - #4, #16, #18 - #21, #24 and #25, the MSDE finds that the IEP team conducted a reevaluation in December 2016 when it considered the report of the independent psychological assessment and determined that no additional information was needed. Based on the Findings of Facts #7, #13, #23, #31 and #33, the MSDE further finds that no fine motor needs relating to handwriting, and no speech and language needs, have been identified as areas of need. Therefore, the MSDE finds that the reevaluation was sufficiently comprehensive, and does not find a violation.

However, based on the Findings of Facts #21 -# 23, the MSDE finds that the IEP team did not consider the recommendation in the report of the independent psychological assessment private that the student be provided with accommodations to address graphomotor disorders. Therefore, the MSDE finds a violation with respect to this aspect of the allegation.

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## **CORRECTIVE ACTIONS/TIMELINE:**

### **Student-Specific**

The MSDE requires the AACPS to provide documentation by July 15, 2017 that the IEP team has convened and considered the independent evaluator's recommendation to provide the student with accommodations to address graphomotor disorders. If the IEP is revised as a result of addressing the recommendation, the IEP team must also determine the compensatory services or other remedy for the delay in the provision of services.

The AACPS must ensure that the parent is provided with written notice of the IEP team's decisions.

The AACPS must provide documentation, within one (1) year of the date of this Letter of Findings, that the student has been provided with the compensatory services or other remedy, if determined by the IEP team as a result of this investigation, or documentation of the parent's refusal of such compensatory services or other remedy.

### **School-Based**

The MSDE requires the AACPS to provide documentation by the start of the 2017 - 2018 school year, of the steps it has taken to ensure that the XXXXXXXXXX School staff comply with the IDEA and related State requirements relating to the violation identified in this Letter of Findings.

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.

Please be advised that both the complainant and the AACPS 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

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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 requirement as reported in this Letter of Findings.

Questions regarding the findings and conclusions contained in this letter should be addressed to this office in writing. The parents 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 a due process complaint.

Sincerely,

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

MEF/ksa

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