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June 20, 2015

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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: #16-111

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 April 21, 2015, the MSDE received a complaint from Ms. XXXXXXXXXXX and Mr. XXXXXXXXXXX, hereafter, “the complainants.” 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 their son, the above-referenced student.

The MSDE investigated the following allegations:

- 1) The AACPS did not follow proper procedures when responding to a request for an IDEA evaluation in August 2015, in accordance with 34 CFR 300.301 and COMAR 13A.05.01.04-.06.
- 2) The AACPS did not ensure that proper procedures were followed to determine the Home and Hospital Teaching (HHT) services to be provided to the student and to develop a plan to transition the student back to school since the beginning of the 2015-2015 school year, in accordance with COMAR 13A.03.05.03 and .04 and 13A.05.01.10.

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- 3) The AACPS has not ensured that the student's Individualized Education Program (IEP) addresses the student's transportation, social, emotional and behavioral needs, since April 2015, in accordance with 34 CFR §§300.320 and 324.

INVESTIGATIVE PROCEDURES:

1. On April 21, 2015, the MSDE sent a copy of the complaint, via facsimile, to Ms. Bobbi Pedrick, Director of Special Education, AACPS.
2. On April 29, 2015 Mr. Gerald Loiacono, Complaint Investigator, MSDE, conducted a telephone interview with the student's mother about the allegations for the investigation.
3. Mr. Loiacono received documentation from the complainants, via electronic mail, on April 29, 2015.
4. On May 4, 2015, the MSDE sent correspondence to the complainants that acknowledged receipt of the complaint and identified the allegations subject to this investigation. On the same date, the MSDE notified the AACPS of the allegations and requested that the school system review the alleged violations.
5. On May 12, 2015, Mr. Loiacono contacted Ms. Allison Barmat, Program Manager of Legal Issues and Compliance, AACPS, to arrange a site visit.
6. On June 1, 2016, Mr. Loiacono and Ms. Anita Mandis, Section Chief, Complaint Investigation Section, MSDE, conducted a site visit at XXXXXXXXXXXXXXXXXXXX, and interviewed the following school staff:
 - a. Ms. XXXXXXXXXXXX, Special Educator;
 - b. Ms. XXXXXXXXXXXX, School Principal;
 - c. Ms. XXXXXXXXXXXX, Program Manager, Home/Hospital Instruction;
 - c. Ms. XXXXXXXXXXXXXXXX, Special Educator; and
 - d. Ms. XXXXXXXX, School Psychologist.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.
7. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
 - a. IEP, dated October 14, 2014;
 - b. IEP, dated February 11, 2016;
 - c. IEP, dated March 14, 2016;
 - d. Prior Written Notice, dated May 22, 2015;
 - e. Prior Written Notice, dated June 12, 2015;

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- f. Prior Written Notice, dated September 2, 2015;
- g. Prior Written Notice, dated September 29, 2015;
- h. Prior Written Notice, dated October 14, 2015;
- i. Prior Written Notice, dated November 11, 2015;
- j. Prior Written Notice, dated November 20, 2015;
- k. Prior Written Notice, dated February 11, 2016;
- l. Prior Written Notice, dated March 14, 2016;
- m. Prior Written Notice, dated April 21, 2016;
- n. The reports of the student's private physician, dated April 17, 2015 and May 14, 2015;
- o. Report of an Academic Assessment, dated June 1, 2015;
- p. Report of a Psychological Assessment, dated June 3, 2015;
- q. Reports of observations of the student conducted on May 27, 2015, and June 1 and 4, 2015;
- r. Reports of the student's progress towards achievement of the annual IEP goals, dated January 23, 2015, April 10, 2015, and June 12, 2015;
- s. Student Attendance, 2014-2015 school year;
- t. Evaluation Report, dated September 2, 2015;
- u. IEP Team Consideration of Neuropsychological Assessment, dated September 2, 2015;
- v. IEP Team Consideration of Psychologist Letter, dated September 2, 2015;
- w. Neuropsychological Assessment, dated July 24, 2015;
- x. Communication Assessment, dated October 14, 2015;
- y. Consent for Speech and Language Assessment, dated September 29, 2015;
- z. The AACPS Referral and Checklist for Home and Hospital Teaching, dated September 17, 2015;
- aa. Treatment plan from the student's private psychologist, dated September 24, 2016;
- bb. Treatment Protocol developed by the student's private psychologist, undated;
- cc. Reintegration plan, developed by the IEP team, dated December 2, 2015;
- dd. Complainant Edits to Reintegration Plan, dated December 3, 2015;
- ee. "Student Data Sheets", dated October 28, 2015 to February 19, 2016;
- ff. "Student Data Sheets," dated February 12, 2016 to May 26, 2016;
- gg. Evaluation Report - Concurrent Home & Hospital Teaching, dated April 10, 2016;
- hh. Student Attendance, dated from August 24, 2015 to May 27, 2016;
- ii. Correspondence from the school staff to the complainants concerning absences, dated January 14, 2015, and April 17, 2015;
- jj. Electronic Mail (Email) from the complainants to school staff, dated May 13, 2015;
- kk. Email from the school staff to the complainants, dated May 13, 2015;
- ll. Correspondence from the complainants to the school staff, dated June 12, 2015;
- mm. Correspondence from the complainants to the school staff, dated June 24, 2015;
- nn. Correspondence from the school staff to the complainants, dated July 2, 2015;
- oo. Correspondence from the complainants to the school staff, dated August 13, 2015;

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- pp. Correspondence from the school staff to the complainants, dated August 14, 2015;
- qq. Correspondence from the complainants to the school staff, dated August 18, 2015;
- rr. Correspondence from the AACPS staff to the complainants, dated August 20, 2015;
- ss. Correspondence from the student's private psychologist to the AACPS staff, dated August 25, 2015;
- tt. Email from the complainants to the school staff, dated August 26, 2015;
- uu. Emails between school staff, dated August 27, 2015
- vv. Correspondence from the AACPS HHT staff to the complainants, dated September 30, 2015;
- ww. Email from the student's teacher to the school psychologist, dated October 23, 2015;
- xx. Emails from the student's teachers to school psychologist, dated November 2, 2015
- yy. Email from school psychologist to the student's private psychologist, dated November 3, 2015;
- zz. Correspondence from the HHT service provider to the AACPS staff, dated November 5, 2015;
- aaa. Email from the school psychologist to student's private psychologist, dated November 2, 2015
- bbb. Email from the complainants to the school staff, dated November 9, 2015;
- ccc. Email from the AACPS staff to the complainant, dated November 10, 2015;
- ddd. Email from the complainants to the school staff, dated December 3, 2015;
- eee. Email from the AACPS staff to the complainants, dated December 3, 2015;
- fff. Email from the complainants to the school staff, dated December 6, 2015;
- ggg. Email from the AACPS staff to the complainants, dated December 7, 2015
- hhh. Email from the complainants to school staff, dated December 7, 2015;
- iii. Email from the AACPS staff to the complainants, dated December 8, 2015;
- jjj. Email from the complainants to school staff, dated February 16, 2016;
- kkk. Email from the AACPS staff to the complainants, dated February 25, 2016;
- lll. Email from the HHT service provider to the school staff, dated February 25, 2016;
- mmm. Email from the complainants to the AACPS staff, dated February 25, 2016;
- nnn. Email from the school staff to the complainants, dated March 1, 2016;
- ooo. Email from the school staff to the complainants, dated March 4, 2016;
- ppp. Email from the complainants to the school staff, dated March 7, 2016;
- qqq. Email from the complainants to the ACCPS staff, dated March 26, 2016;
- rrr. Email from the ACCPS staff to the complainants, dated March 29, 2016;
- sss. Email from the school staff to the complainants, dated April 1, 2016;
- ttt. Email from the AACPS HHT staff to the student's private psychologist, dated April 4, 2016;
- uuu. Email from the complainants to the school staff, dated April 5, 2016;

vvv. Email from the complainants to the school staff, dated April 8, 2016;

BACKGROUND:

The student is ten years old, and attends XXXXXXXXXXXXXXXXXXXX. Prior to June 12, 2015, he was identified as a student with Autism. On June 12, 2015, the student was determined to no longer be eligible for special education services. On September 2, 2015, he was identified as a student with multiple disabilities under the IDEA, including Autism and an Emotional Disability, and has an IEP that requires the provision of special education services. (Docs. a-f).

ALLEGATION #1: EVALUATION PROCEDURES

FINDINGS OF FACTS:

1. On June 12, 2015, the IEP team conducted a reevaluation and determined that the student no longer met the criteria for identification as a student with a disability because he was not demonstrating the need for specialized instruction as a result of his identified disability of Autism (Docs. e and kk).
2. On June 24, 2015, the complainants sent correspondence to the school staff requesting a new IDEA evaluation (Doc. mm).
3. One July 2, 2015, the school staff at denied the request for evaluation, explaining that there was no new data to consider since the June 12, 2015 reevaluation. The school staff indicated that a 504 team¹ meeting would be held between August 17-20, 2015 to consider whether the student requires accommodations as a result of his disability (Doc. nn).
4. On August 13, 2015, the complainants, again, made a referral for an IDEA evaluation, stating that the student recently underwent a neuropsychological assessment (Doc. oo).
5. On August 14, 2015, the school staff denied the request for an IDEA evaluation based on a misunderstanding about whether there was new data to consider, but agreed to an IDEA evaluation on August 20, 2015 after realizing that the neuropsychological assessment would provide new data to be considered (Docs. pp-rr).
6. On September 2, 2015, the IEP team, including the complainants, met to conduct an IDEA evaluation of the student. Based on the neuropsychological assessment as well as input from the student's psychologist about the student's emotional status and input from the complainants that the student was unable to attend school due to anxiety, the IEP team decided to identify the student as a student with a disability under the IDEA. The

¹ This refers to the school team who would develop an Accommodations Plan under Section 504 of the Rehabilitation Act of 1973.

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IEP team also recommended that a speech/language assessment be conducted (Docs. f, t-w).

7. On September 29, 2015, the complainants provided consent for the speech/language assessment (Doc. y).
8. On November 11, 2015, the IEP team met to review the results of the speech/language assessment. Based on the results of the assessment, the IEP team determined that the student does not have a speech/language impairment (Docs. i and x).

DISCUSSION/CONCLUSIONS:

School staff are required to promptly respond to a parent's written request for an IDEA evaluation. If the public agency does not suspect that the student has a disability under the IDEA, it must provide the student's parent with written notice that the student is not suspected of being a student with a disability and that an evaluation will not be conducted. This notice includes a statement of the decision, the basis for the decision, the options considered and reasons for rejection of options, a description of any other factors relevant to the determination, and notice of the procedural safeguards (34 CFR §§300.111 and .503 and COMAR 13A.05.01.04 and .06).

In this case, the complainants allege that the school system failed "to provide FAPE by failing to hold an IEP eligibility meeting upon parent's request in August 2015 when new information (Neuropsychology) was provided and an IEP eligibility meeting was requested."

Based on the Findings of Facts #1-8, the MSDE finds that the documentation does not support the allegation that the school system failed to hold an IEP team meeting upon the complainants' request for evaluation to consider the results of a neuropsychological assessment. Therefore, this office does not find that a violation occurred with respect to the allegation.

ALLEGATIONS #2 AND 3: PROVISION OF HOME AND HOSPITAL SERVICES AND ADDRESSING THE STUDENT'S BEHAVIORAL AND TRANSPORTATION NEEDS

FINDINGS OF FACTS:

April 2015 - June 2015

9. On May 13, 2015, the student's mother sent an email to the school staff with the subject line "school refusal crisis," and reporting that the student "has been experiencing significant anxiety related to attending school since January." The student's mother also reported that much of the student's anxiety is due to his concerns about performance and advance knowledge of expectations, and that his doctor recommended strategies to manage his anxiety about attending school. The student's mother requested to discuss implementation of the strategies with the school staff. The school staff responded by

offering to speak with her by telephone; they also stated that an IEP team meeting would be scheduled in order for the full IEP team to consider the information (Docs. jj-kk).

10. On May 22, 2015, the IEP team convened to conduct reevaluation planning for the student. The IEP team reviewed the student's current performance, existing data, curriculum based assessments, current educational performance, and progress. The student's mother reported that the student does not demonstrate the same skills at home that the school staff report he is demonstrating at school. She expressed concerns about the student's comprehension and his inability to independently complete assignments. She also reported that the student has difficulty with "the unexpected and the unknown." The school staff stated that the student is provided with support in the classroom and that the staff ask how they can assist him when he becomes anxious (Doc. d).
11. The IEP team also considered two reports from the student's physician, dated April 17, 2015 and May 14, 2015, based on the physician's interviews with the student and his parents. The reports state that "changes and new events, (even seemingly small ones like a new activity in physical education class), can be very difficult for [the student], causing intense anxiety" due to his Autism and anxiety disorder. The reports also state that the student frequently has episodes of "intense anxiety," sometimes accompanied by school refusal. It also indicates that the student has difficulty with pragmatic language and appropriate communication skills in "high emotional situations, such as when he is upset or anxious." The reports include recommendations to address the student's anxiety and school refusal, including advance notice for changes and new activities, and check-ins with school staff during independent work. The physician recommended a psychological evaluation and a formal pragmatic language evaluation of the student (Docs. d and n).
12. The IEP team documented its consideration that the student may have Autism and an Emotional Disability. The IEP team recommended assessments in reading, math, written expression, as well as assessments and observations in the area of social, emotional and behavior. The student's mother provided consented for assessments. The IEP team also discussed the student's past achievement of an IEP goal in the area of pragmatic language. Based on this information, the IEP team did not recommend an assessment in the area of pragmatic language (Docs. d and r).
13. On June 12, 2015, the IEP team convened and considered information from the student's mother that the student has "high anxiety" and her belief that his anxiety impacts him throughout the school day. She explained that the student "often becomes very upset" worrying about the upcoming school day, homework assignments, and changes in schedule. As a result, the student becomes "agitated" at home before school, has difficulty getting on the school bus. The written summary of the IEP team meeting reflects that, on such mornings, when the complainants notified the school staff, the school staff would greet the student upon his arrival to provide him which any assistance he may need (Doc. e).

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14. The IEP team also reviewed the report of a psychological evaluation of the student, dated June 3, 2015. The report reflects the following information:
 - In the classroom, the student was able to transition between groups without additional prompts or support. He appeared happy and engaged in class, interacted with peers and completed assigned tasks. The student “did not stand out from his classmates due to academic or behavioral concerns.”
 - The student’s mother reported “clinically significant” levels of anxiety at home.
 - The school staff reported varying degrees of anxiety in different school settings.
 - Both the student’s mother and some school staff reported that the student worries about schedules and uncertain expectations, and is afraid of making mistakes.
 - While the student reported an above average anxiety rating, based on reports that he worries about things that are related to the unknown, he reported “positive feelings about school and teachers.”
 - The school staff reported that they provide assistance to the student upon his arrival to school on mornings when he appears to be anxious. They further report that, after brief conversations with the school staff about his concerns, the student is able to transition to class and successfully participate in the school day (Docs. e and p).
15. The IEP team also reviewed the results of the academic assessments indicating that the student is performing on grade level in reading, math and written language, and the April 2015 reports of the student’s progress reflecting his mastery of all of the annual IEP goals (Docs. e, o and r).
16. The IEP team also considered three (3) reports of observations that were conducted of the student in various school settings. The observation reports reflect that the student arrived at school appearing “relaxed and calm,” was able to transition smoothly from the bus to the classroom, demonstrated positive interactions with peers, and had no difficulty participating and following directions. The observation reports also reflect that the student received the support of school staff prior to his first class in order to review his communication book and discuss his anxiety and concerns about the school day (Docs. e and q).
17. At the time of the June 12, 2015, IEP team meeting, the IEP team had the following information about the student, as documented by the school staff through emails sent to the student’s mother in May and June 2015:
 - Although the student has been upset on a few occasions during the school day, he has been able to calm down with the assistance of school staff.

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- The school staff “check in” with the student during the day, and are available to make sure that he “settles in” to classes.
- The school staff meet with the student in the morning to address his feelings and concerns about the day, which allows him to successfully transition to class.

The IEP team also had information that the student had missed 23 days of school since the start of the 2014-2015 school year. The documentation indicates that 15 days were due to illness, and six days were due to being out of town (Docs. s and ii).

18. Based on its review of the data, including the concerns of the complainants, the IEP team determined that, while the student needs support in school, he does not require special education services. The IEP team discussed that supports to address the student's needs related to his anxiety could be provided through the development of a 504 Plan.² The student's mother disagreed with the IEP team's decision based on her belief that the student requires an IEP because he is unable to function independently and appropriately, and cannot access the curriculum without modifications and adult support (Doc. e).

2015 - 2016 School Year

19. On August 25, 2015, after the first day of school, the student's private psychologist sent correspondence on behalf of the complainants to the AACPS requesting concurrent HHT³ services due to the student's “Generalized Anxiety Disorder, Autism Spectrum disorder and school refusal”, stating that a plan needed to be developed to return the student to school. The psychologist did not sign the request, which was required for proper verification of the need for HHT services (Doc. ss).
20. On August 26, 2015, the student's mother informed the school staff that the student would be participating in HHT services. She further expressed a desire for the school staff to be aware of the “treatment plan” for the student which was being developed by the student's private psychologist and indicated that the student would attend school for part of the day. That plan would require:
- That the student be “slowly desensitized to school-related anxiety triggers”;
 - That the overall measure of the student's levels of anxiety be determined by student reports, with input from the parent and school staff;
 - The use of a dedicated aide in the classroom setting;
 - When the student is able to attend full days of school, an aide on the school bus;
 - The ability of the student to take breaks when feeling anxious; and
 - The fading of supports once the student is able to demonstrate lowered levels of anxiety.

² This refers to an Accommodations Plan under Section 504 of the Rehabilitation act of 1973.

³ Concurrent HHT services allow the student to attend school on an intermittent basis, while receiving services in the home when school attendance is not possible.

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The school staff requested a copy of the “treatment plan”. The school staff also expressed concern that it had been awkward and stressful for the student when he had been sent home in the middle of the day. The student reported to his peers during this time that he was going home, “because my mom wants me to” (Docs. tt and aa).

21. On September 2, 2015, the student was identified as a student with a disability under the IDEA (Doc. f).
22. On September 13, 2015, AACPS staff received verification of the student’s need for HHT services, which was accepted by the school system, and a HHT service provider was assigned on September 21, 2015 (Doc. z).
23. From August 25, 2015 to September 29, 2015, the student did not attend school for a complete day, was absent for the entire day on two days, and attended school for four hours or less on 20 days (Doc. hh).
24. On September 29, the IEP team met to develop an IEP for the student and determine the supports required for the student to attend school. The IEP team determined that the student required additional adult support during the school day to assist him if he becomes anxious (Doc. g).
25. From September 30, 2015 to October 14, 2015, the student did not attend school for a complete day, was absent for the entire day once, and attended school for four hours or less on 10 days (Doc. hh).
26. On September 30, 2015 and October 1, 2015, attempts were made by the HHT service provider to arrange for the provision of services with the complainants (Doc. zz).
27. On October 4, 2015, the complainants requested a meeting with school staff and the HHT service provider. A meeting was scheduled for that week (Doc. zz).
28. On October 5, 2015, the complainants requested to reschedule the meeting with the school staff and the HHT service provider until after October 12, 2015 (Doc. zz).
29. On October 13, 2015, the complainant contacted the HHT service provider and requested that HHT services begin after October 20, 2015 (Doc. zz).
30. On October 14, 2015, the IEP team met to discuss a plan to assist the student with attending school regularly. The complainants provided a treatment plan that was developed by the student’s private psychologist. The IEP team discussed elements of the treatment plan, and were in agreement on the need for additional adult support, as recommended in the plan. The IEP team did not come to an agreement regarding the role, and the proximity of the dedicated aide to the student, or the specifics of the anxiety scale designed for the student to communicate his levels of anxiety to school staff. The

complainant requested that the school staff adhere to a daily agenda (schedule) for the student, and that she be contacted if there is any daily change to the agenda or school staffing. The school staff explained that this was not always possible in a school setting because staff illness and other circumstances affecting the school day are not always known in advance. The IEP team determined that the complainant would communicate the student's projected schedule on a weekly basis. While the complainants initially provided consent to the school staff to communicate with the student's private psychologist, consent was later withdrawn (Docs. a, h, k-m, and ooo).

31. On October 23, 2015, the HHT service provider met with the student to begin HHT services (Doc. zz).
32. On October 23, 2015, the student's teacher expressed her concerns to the school psychologist that the adherence to a strict daily agenda was increasing, and not decreasing, the student's anxiety levels. On November 2, 2015 the school staff reported to the school psychologist that the presence of the dedicated assistant in very close proximity to the student was not appropriate in an educational setting, was negatively impacting the student's social interactions, and lead to an increase in the student's anxiety levels. On November 3, 2015, the school psychologist shared these concerns with the student's private psychologist (Docs. ww-yy).
33. On November 2, 2015, the school staff reported that the student told them that he "probably won't stay after lunch all week because we don't have [the private psychologist's] scale⁴ yet", and that he would "see [the HHT service provider] tomorrow" (Doc. xx).
34. On November 9, 2015, the complainant expressed concerns that the plan that was proposed by the student's private psychologist was not adopted by the IEP team in its entirety. She requested that all elements of the plan currently in place, including the dedicated aide, be suspended until the full plan was adopted by the IEP team. In response, the AACPS staff contacted the complainant on November 10, 2015 and stated that the complainant could not unilaterally suspend parts of an IEP (Docs, bbb-ccc).
35. From October 14, 2015 to November 20, 2015, the student was absent fourteen times, attended school for four hours or less on 12 days, and did not attend school for one complete day (Doc. hh).
36. On November 20, 2015, the IEP team met to discuss the plan for returning the student to school on a regular basis. The complainants' proposed plan required that the dedicated aide sit next to the student at all times except during lunch and recess. The IEP team rejected this proposal and instead decided that the aide will sit next to the student only when he reports sustained higher anxiety levels (Doc. j).

⁴This is a scale developed by the student's private psychologist to measure the student's anxiety.

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37. From November 30, 2015 to February 11, 2016, the student was absent fifteen times, attended school for four hours or less on 24 days and attended for the entire day two occasions (Doc. hh).
38. On December 3, 2015, the complainants again requested that the plan developed by the student's private psychologist be added to the student's IEP. The school staff replied that elements of the plan, as now proposed by the complainants, would not be added to the student's IEP because it would only allow the complainants and the student's private psychologist to provide feedback on the level of the student's anxiety, and determine progress towards reintegration to school on a regular basis. The AACPS staff further explained that the student's teachers were the appropriate source of measuring feedback from the student while he was in school (Docs. ddd-eee).
39. On December 6, 2015, the complainants again requested that elements of the plan developed by the student's private psychologist requiring the school staff to consult with the complainant or the student's private psychologist to determine the student's levels of anxiety be added to the student's IEP, and expressed concern that the student was not yet capable of accurately reporting his own levels of anxiety. The complainants further expressed concern that the school staff were progressing too quickly with the plan by meeting the student closer to his classroom when he arrives in school (Doc. fff).
40. On December 7, 2015, the AACPS staff replied to the complainants stating that, because the student reported low levels of anxiety for a week, the school staff proceeded with the plan to return the student to school regularly, and faded some of the adult support upon arrival at school. The AACPS staff explained that the school staff would not consult with the complainant, or the student's private psychologist, once the student was in the school setting to seek their opinions on his current level of his anxiety because it would not result in an objective measure. The AACPS staff further explained that the IEP team must collect information directly from the student to determine his level of anxiety (Docs. ee and ggg).
41. On December 7, 2015, the complainants contacted the AACPS staff to express their concern that the anxiety scale had not been "verified" with the student. The complainants disagreed that the student had expressed less anxiety, and therefore did not require his dedicated aide to meet him in the lobby. The complainants requested an IEP team meeting to discuss these issues (Doc. hhh).
42. On December 8, 2015, the AACPS staff replied to the complainants that elements of the plan, as proposed, had not, and would not, be included in the student's IEP because it did not allow for objective measurement of the student's progress towards attending school. The AACPS staff offered to convene a meeting with the AACPS Director of Special Education. (Doc. iii).
43. On February 11, 2016, the IEP team met to discuss the student's plan for attending school. In response to the student's increased absences, the IEP team developed a plan to

deliver HHT services when the student misses entire days of school. The AACPS staff, and the IEP team determined that the student would receive HHT services if he missed two or more consecutive days of school. The school-based members of the IEP team again requested consent to communicate with the student's private psychologist. The school staff expressed concern over the discrepancy between the low levels of anxiety observed in the school setting, and the higher levels of anxiety reported in other settings from the complainants. The AACPS staff present at the meeting suggested that the private psychologist observe the student in the school setting, at the expense of the AACPS. The complainants rejected both proposals. (Docs. b, k and gg).

44. On February 25, 2016, following the complainants' rejection of the proposal to have the private psychologist observe the student in school, the school staff proposed video recording the student in the educational setting. The school staff proposed sharing the video with the private psychologist so that she can observe the same low levels of anxiety that the school staff observed. The complainants rejected the school staff's proposal stating that the student's difficulties were not in the school setting, but at home and at the bus stop in the mornings (Docs. jjj and lll).
45. The student was present on February 12, 18 and 19, 2016, but did not attend the next 29 days of school. During this time period, there is documentation that the complainants refused to send the student to school because of their disagreement the choice of the individual who was serving as the student's dedicated assistant, and disagreements with the school staff regarding student's agenda. During this period, the school staff often reported not knowing if the student would be attending school (Docs. hh, jjj, and ooo-ppp).
46. On March 4, 2016, the school staff contacted the complainants in response to the student's anxiety at home and on the bus in the mornings. The school staff offered to provide compensation to the complaints for providing transportation to school if the student was unable to ride the bus. The school staff also requested to contact the student's private psychologist directly. The complainants did not respond to the offer of compensation for transportation, but did state that they would not consent to the school staff communicating with the private psychologist. The complainants explained that their filtering of all communication between the school staff and the private psychologist would "deepen that commitment to reducing inaccurate or incomplete messages and reinforces our critical role as equal members of the IEP team" (Docs.ooo-ppp).
47. On March 16, 2016, the IEP team met to discuss the student's plan for attending school regularly. The complainants reported that the student exhibited the most anxiety in the mornings, and would not get on the bus. The complainant reported that the student experienced anxiety at the bus stop. The school staff again requested consent to communicate directly with the student's private psychologist. The complainants again denied the school staff's request. The complainants requested a Functional Behavior Assessment to collect data on the student's behavior at the bus stop, and the team agreed.

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The IEP team also determined that the student required a bus aide to assist him with attending school (Docs. c and l).

48. On March 26, 2016, the complainants contacted the AACPS staff to express concerns regarding the FBA to be conducted at the bus stop, that a bus aide was not yet assigned, and that they were not notified about a potential change in the individual who would provide school-based psychological services. The complainants were concerned that data collection of the student's anxiety at the bus stop would be "biased." The AACPS staff replied a bus aide would be assigned before the FBA was conducted. The AACPS staff stated that the FBA would be conducted by AACPS staff, and that it is not a process that could be "biased." The AACPS staff also reiterated that choice of individual service providers, such as school psychologists and dedicated assistants, is not an IEP team decision (Docs. qqq and rrr).
49. From March 17, 2015 to April 21, 2016, the student was absent 12 times, attended school for four hours or less two times and attended for the entire day two times. There is documentation that during this time, the complainants did not inform the school staff in advance when the student would not attend school, and that the student was not attending school due to their concerns over staffing (Docs. hh, sss, uuu-vvv).
50. On April 4, 2016 the AACPS staff received reverification of the need for concurrent HHT services. In response, the AACPS staff informed the complainants that as the result of the student's extended absences, the student was no longer concurrently attending school, and may not qualify for concurrent HHT. The student's private psychologist replied that she "anticipate[s] that he will be back in school" (Doc. ttt).
51. On April 21, 2016, the IEP team met to discuss the student's plan to regularly attend school. The complainants refused to sign consent for the FBA that they requested at the previous IEP team meeting. The IEP team determined that the student would benefit from the assistance of social work services in the morning at home, prior to leaving for school, to assist the student with preparing to ride the bus. The IEP team reported that a different dedicated assistant was provided to the student while in school. The teacher reports prepared for the meeting indicate that the student generally reported no anxiety when actually in school. When episodes of anxiety did occur, staff were able address his concerns with limited intervention (Docs. m and ff)
52. From April 22, 2016 to May 27, 2016, the student was absent six times, but able to attend nineteen full school days. The data sheets prepared to measure the student's anxiety reflect that he generally experienced low levels of anxiety in the school setting (Docs. hh and fff).

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DISCUSSION/CONCLUSIONS:

Allegation #2 Provision of Home and Hospital Teaching Services

Each public agency must make instructional services available to students, including students with disabilities, who are unable to attend the school of enrollment due to a physical or emotional condition. The need for Home and Hospital Teaching (HHT) services is determined through the verification of a physical or emotional condition that prevents a student from attending school, in accordance with the state regulations. For students who are able to attend school on an intermittent basis, the student may receive concurrent HHT services while remaining enrolled, and attending school when possible. (COMAR 13A.03.05.01 and .03).

For students with disabilities, the IEP team must determine the instructional services to be provided in the home and must develop a plan for returning the student to a school-based program (COMAR 13A.05.01.10).

In this case, the complainants allege that the IEP team did not determine the services to be provided to the student in the home and did not develop a plan for returning the student to a school-based program.

Based on the Findings of Facts #19-43, the MSDE finds that, although the student has been attending school intermittently since the start of the 2015-2016 school year, it was not until February 11, 2016 that the IEP team determined the HHT services to be provided on those days when the student did not attend school. Therefore, this office finds that a violation occurred with respect to this aspect of the allegation.

Based on the Findings of Facts #19-52, the MSDE finds that the IEP team has been attempting to develop a plan to return the student to school on a regular basis since the start of the 2015-2016 school year. Therefore, this office does not find that a violation occurred with respect to this aspect of the allegation.

Allegation #3 Addressing the Student's Social, Emotional, and Transportation Needs

In order to provide a Free Appropriate Public Education (FAPE) to a student with a disability, 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. (34 CFR §§300.101, .320, and .324).

In this case, the complainants allege that the student has had "significant public school transportation issues for 12 months (since March 2015)," related to social, emotional and behavioral needs that have not been addressed.

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Based on the Findings of Facts #9-18, the MSDE finds that there is no documentation that the student had social, emotional, and behavioral needs until the start of the 2015-2016 school year. Based on the Findings of Facts #19-52, the MSDE further finds that the IEP team has been attempting to address those needs since they were identified.

Further, based on the Finding of Fact #47, it was not until March of 2016 that transportation was an identified concern. Based on the Findings of Facts #48-52, the MSDE further finds that the IEP team has been attempting to address the student's transportation needs since they were identified. Therefore, this office does not find that a violation occurred with regard to this allegation.

CORRECTIVE ACTIONS/TIMELINE:

The MSDE requires the AACPS to provide documentation by the start of the 2016-2017 school year that the IEP team has determined the compensatory services or other agreed upon remedy for any loss of provision of HHT services to the student on the days on which he was unable to attend school from the start of the 2015-2016 school year until February 11, 2016.

Documentation of the 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 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 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 complainant and the school system maintain

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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:gl

c: XXXXXXXXX
 XXXXXXXXX
 George Arlotto
 Alison Barmat
 XXXXXXXXXXX
 Dori Wilson
 Anita Mandis
 Gerald Loiacono
 Nancy Birenbaum