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July 6, 2016

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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: #16-121

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 May 4, 2016, the MSDE received a complaint from Ms. XXXXXXXXXXXXXXXX, hereafter, “the complainant,” on behalf of her son, the above-referenced student. In that correspondence, and in subsequent electronic mail correspondence received on June 1, 2016, 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 did not ensure that proper procedures were followed when using exclusion with the student at XXXXXXXXXXXXXXXXXXXX (XXXXXXXXXXXX) during the 2015 - 2016 school year, in accordance with COMAR 13A.08.04.
2. The AACPS did not ensure that the student was provided with the special education services required by the Individualized Education Program (IEP) at XXXXXXXXXXXXXXX during the 2015 - 2016 school year, in accordance with 34 CFR §§300.101 and 323. Specifically, the complainant alleged the following:

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- a. The AACPS did not ensure that the student was consistently provided with instruction by a general education teacher;
 - b. The AACPS did not ensure that the student was monitored for, and provided with, grief counseling;
 - c. The AACPS did not ensure that the student was consistently seated next to the general education teacher; and
 - d. The AACPS did not ensure that the student was permitted to attend all three (3) staggered start days at the start of the 2015 - 2016 school year.
3. The AACPS did not follow proper procedures to identify and address all of the student's needs during the 2015 - 2016 school year, in accordance with CFR §§300.101, .320, .324 and .304 - .306.
 4. The AACPS has not ensured that proper procedures were followed when determining that the Least Restrictive Environment (LRE) in which the student's IEP can be implemented is placement in a nonpublic separate special education school, in accordance with 34 CFR §§300.114 - .116.
 5. The AACPS did not ensure that proper procedures were followed to determine the student's eligibility for Home and Hospital Teaching (HHT) services, and that he was provided with the amount of HHT services required by the IEP, during the 2015 - 2016 school year, in accordance with 34 CFR §300.101, and COMAR 13A.03.05.03 and 13A.05.01.10.
 6. The AACPS did not ensure that proper procedures were following when using physical restraint with the student at XXXXXXXX ES during the 2015 - 2016 school year, in accordance with COMAR 13A.08.04.

INVESTIGATIVE PROCEDURES:

1. On May 5, 2016, the MSDE provided a copy of the State complaint, by facsimile, to Ms. Bobbi Pedrick, Executive Director of Special Education, AACPS.
2. On May 5, 2016 and June 8, 2016, the MSDE sent correspondence to the complainant that identified the allegations subject to this investigation. On the same dates, the MSDE notified the AACPS of the allegations and requested that the AACPS review the alleged violations.
3. On May 13 and 16, 2016, Ms. K. Sabrina Austin, Education Program Specialist, MSDE, conducted telephone interviews with the complainant regarding the allegations to be investigated.

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4. On May 23, 2016, and June 1, 14, 15 and 20, 2016, the complainant provided documentation to the MSDE for consideration.
5. On May 27, 2016, Ms. Austin conducted a review of the student's educational record at the AACPS Central Offices.
6. On May 27, 2016 and June 14, 2016, the AACPS provided the MSDE with documentation for consideration.
7. On June 13, 2016, Ms. Austin and Ms. Anita Mandis, Section Chief, Complaint Investigation Section, MSDE, conducted a site visit at XXXXXXXXXXXXXXXXXXXXXXXX (XXXXXXX) and interviewed the following school system staff:
 - a. Ms. XXXXXXXXX, Coordinator, Nonpublic and Interagency Office, AACPS;
 - b. Ms. XXXXXXXXX, Principal, XXXXXXXXXXXXXXXX;
 - c. Ms. XXXXXXXXX, Special Education Program Specialist, AACPS; and
 - d. Ms. XXXXXXXXX, Special Education Teacher, XXXXXXXXXXXXXXXX.

Ms. Alison Barmat, Program Manager of Legal Issues and Compliance, AACPS, 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.

8. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
 - a. Documentation of Comparable Services, dated May 12, 2015;
 - b. The IEP developed by XXXXXX, dated October 14, 2014;
 - c. IEP, dated June 5, 2015, and written summary of the June 5, 2015 IEP team meeting;
 - d. The request for a temporary support assistant, dated June 17, 2015;
 - e. Correspondence from the school staff to the student's mother, dated August 2014, regarding staggered start dates of attendance;
 - f. The student's attendance record from August 24, 2015 to April 29, 2016;
 - g. Written summary of the September 10, 2015 IEP team meeting;
 - h. Written summary of the September 24, 2015 IEP team meeting;
 - i. Graphs tracking the number of occurrences of the student's physical aggression, elopement, and time out of class from September 8, 2015 to February 23, 2016;
 - j. Data charts describing the student's activity, behavior, and time out of instruction, collected in October and November 2015, and January and February 2016;
 - k. Written summary of the October 12 and 30, 2015 IEP team meetings, and the revised IEP, dated October 30, 2015;
 - l. Functional Behavior Assessment, dated October 12, 2015;
 - m. Behavioral Intervention Plan, dated October 30, 2015;

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- n. Correspondence from the school staff to the school system staff documenting the hiring of a full-time temporary teacher assistant to support the student at XXXXX XXXXXX, dated December 9, 2015;
- o. The student's weekly communication logs documenting the student's behavior and calculations of physical aggressions and approximate time out of the classroom, dated December 2015 to February 2016;
- p. Electronic mail (Email) communications between the complainant and the school system staff, and emails among the school system staff, dated June 2015 to June 2016;
- q. The student's schedule identifying the two (2) school staff members assigned to support him during the school day, dated February 11, 12, 17 and 18, 2016;
- r. The schedule of the AACPS behavior specialist, dated September 2015 to April 2016;
- s. The Comprehensive Evaluation Review, dated October 22, 2015;
- t. Written summary of the November 12, 2015 IEP team meeting, and the revised IEP, dated November 12, 2015;
- u. The referral to the AACPS Central Office staff for placement consideration, dated November 17, 2015;
- v. Written summary of the December 10, 2015 IEP team meeting, and the IEP, dated December 10, 2015;
- w. Correspondence to the school system staff from the XXXXXXXXXXXXXXXXXXXX XXXXXXXXXXX Partnership staff, dated December 21, 2015;
- x. Written summary of the January 12, 2016 IEP team meeting, and IEP, dated January 12, 2016;
- y. Parental permission to release information, signed by the complainant on January 12, 2016;
- z. Written summary of the February 29, 2016 IEP team meeting, and revised IEP, dated February 29, 2016;
- aa. The referral for the student to receive Home and Hospital Teaching (HHT) instruction, dated March 1, 2016, and the verification of the school psychologist for HHT instruction, dated March 1, 2016;
- bb. Correspondence among the school system staff indicating approval of HHT services, dated March 9, 2016, and the timesheet of the school system staff providing HHT instruction to the student, undated;
- cc. Reports documenting the school staff's time spent providing Home and Hospital Teaching services, for pay periods March 31, 2016 to April 13, 2016, and April 14 - 27, 2016;
- dd. Notice of the June 14, 2016 IEP team meeting, and written summary of the June 14, 2016 IEP team meeting;
- ee. Written summary of the April 11, 2016 IEP team meeting, and revised IEP, dated April 11, 2016;
- ff. Correspondence from the High Road School staff to the school system staff confirming the student's admission and start date for attendance, dated April 13, 2016;

- gg. Revised IEP, dated March 7, 2016;
- hh. Amended IEP reflecting placement in a nonpublic, separate special education school, dated April 11, 2016;
- ii. Report of a neuropsychological assessment privately obtained by the complainant, which was conducted in January and February 2016;
- jj. Report of a neuro-vision rehabilitation evaluation privately obtained by the complainant, dated April 15, 2016;
- kk. The Request for Mediation and Due Process Complaint filed by the AACPS on April 18, 2016, and correspondence from the AACPS requesting withdrawal of the Request for Mediation and Due Process Complaint, dated April 22, 2016;
- ll. Documentation of the use of physical restraint on September 22 and 29, 2015, October 8, 9, 13, 14, 18, 19, 20, 21 and 26, 2015, and November 2 and 3, 2015;
- mm. Documentation of the school system staff members' training in nonviolent crisis intervention;
- nn. The AACPS Proposed Regulation JK: Student Behavior Interventions - Exclusion, Seclusion and Physical Restraint, undated; and
- oo. Correspondence from the complainant, alleging violations of the IDEA, received by the MSDE on May 4, 2016 and June 1, 2016.

BACKGROUND:

The student is six (6) years old. He is identified as a student with multiple disabilities, including Autism and an Other Health Impairment related to inattention under the IDEA, and has an IEP that requires the provision of special education and related services (Docs. c, k, t, v, x, z, ee, gg and hh).

During the period of time addressed by this investigation, the complainant participated in the education-making process and was provided with written notice of the procedural safeguards (Doc. t).

FINDINGS OF FACTS:

1. On June 5, 2015, following the complainant's and student's recent relocation to Maryland, the IEP team convened to develop an initial IEP for the student.¹ The IEP team considered information that the student "has difficulty making it through the entire school day" and "may become restless or easily upset" in the afternoon," has "an excessively high activity level and difficulty staying on task," and has "difficulty with sensory processing skills which could affect his ability to participate in [the] classroom setting." The IEP team discussed that the student "speaks frequently" about the recent death of his father. While the written summary of the meeting reflects that the IEP team recommended that the student be "monitored by the school guidance counselor, the

¹ At the time, the student had an IEP developed by XXX that required specialized instruction and related services (Doc. b).

school psychologist and the IEP team to be available to discuss his feelings of loss,” there is no documentation that the IEP team determined that the student requires “grief counseling” (Doc. c).

2. At the June 5, 2015 IEP team meeting, the IEP team developed an initial IEP with annual goals in math, fine motor, expressive and receptive language, pragmatic language, and requisite learning skills. In order to address the student’s needs, and to assist in achieving the annual IEP goals, the IEP team also determined that the student requires specialized instruction, related services and supplementary supports, including the following:
 - six (6) hours of specialized instruction each week in the general education classroom;
 - fifteen (15) minutes of speech therapy two (2) times a week, and fifteen (15) minutes of occupational therapy three (3) times each month, each to be provided outside of the general education classroom;
 - additional adult support to address the student’s academics and pre-requisite learning skills;²
 - daily seating near or next to the teacher; and
 - daily encouragement and reinforcement of appropriate behavior (Doc. c).
3. The first day of school for kindergarten students is designed to establish a routine for them to follow at school. The AACPS staggers the first day of school for student in kindergarten over a three (3) day period, with one-third ($\frac{1}{3}$) of the incoming class starting on each of the three (3) days, so that there are fewer students in class when teach them the school routine. At the June 5, 2015 IEP team meeting, the IEP team determined that the student’s placement for the 2015 - 2016 school year would be XXXXXX Elementary School (XXXXXXXXX ES). The IEP team also determined that he would attend all of the three (3) staggered start days for students to begin kindergarten in order to give him as much time as possible to transition to the school setting³ (Doc. c and interview with the school system staff).
4. In August 2015, the school staff sent correspondence to the complainant identifying the three (3) staggered start dates for the student to attend school at XXXXXXXXXXXX. The attendance records reflect, and the parties agree, that the student only attended school on two (2) of the staggered start days at the start of the 2015 - 2016 school year. The parties agree that, at a parent-teacher conference, it was discussed that the student might not need to attend all three (3) days. However the school staff deny that he was not permitted to attend all of the start dates (Docs. e and f, and interviews with the parties).

² For the 2015 - 2016 school year, the school staff requested the support of a temporary support assistant (TSA), for fifteen (15) hours each week, to assist the student with academics and pre-requisite learning skills (Doc. d).

³ The school staff exchanged emails on June 10, 2015 confirming the student’s attendance on all three (3) staggered start days (Doc. p).

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5. Beginning as early as the first week of the 2015 - 2016 school year, the student exhibited behaviors that interfered with his participation in, and access to, instruction in the classroom. The behaviors included “physical attacks” on the school system staff that involved pulling hair, hitting, slapping, punching, scratching, biting, throwing, as well as eloping from the instructional area and the classroom. During the first week of September 2015, the school staff met to discuss the behavior difficulty that the student was demonstrating and requested guidance from the AACPS Central Office staff (Doc. p).
6. On September 10 and 24, 2015, the IEP team convened to review the student’s progress. The IEP team discussed the student’s behavioral difficulties, his multiple toileting accidents, and his “limited [academic] success.” The IEP team agreed to modify the student’s assignments, to assign one individual to provide the student with additional adult support for added consistency, and to monitor his progress. On September 24, 2015, the IEP team recommended assessments and the complainant consented to the recommended assessments (Docs. g, h and s).
7. On October 12 and 30, 2015, the IEP team convened to consider the assessment results and to discuss the student’s behavior. The IEP team discussed that the student has a “history of significant distractibility and difficulties with social skills and peer interactions,” and that he has demonstrated “behavior difficulties” since the start of the school year which have “interfered with his ability to remain in class and accomplish academic tasks.” The IEP team also reviewed the data collected on the student’s interfering behaviors which indicated that he exhibited up to fifteen (15) occurrences of physical aggressions in one (1) hour, and up to ten (10) occurrences of elopement from the classroom in one (1) hour. The school staff documented that the student is removed from the classroom when his behavior is “unsafe,” and that at those times, he is “provided a time out in the hallway.” Based on the data, the IEP team developed a Behavior Intervention Plan (BIP) in order to address the student’s elopement, physical aggression and disruptive classroom behaviors. The BIP identified numerous interventions and strategies for the school staff to use with the student, including the following:
 - modified classwork, clear description of assignments and review of expectations before an activity;
 - scheduled sensory breaks, and wait time for the student to respond;
 - visual schedule and visual prompt cards;
 - social stories and social skills training;
 - use of a “first/then” board; and
 - rewards and positive reinforcement and praise for appropriate behavior (Docs. k - m, and s).

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8. Based on the updated assessments and reports of the student's classroom performance, the IEP team made revisions to the student's IEP, including additional supplementary supports, and the provision of specialized instruction in a separate special education classroom. The IEP team agreed to reconvene in two (2) weeks to determine whether the strategies and supports required in the newly developed BIP would result in an improvement in the student's behavior (Doc. k).
9. The IEP team reconvened on November 12, 2015 to review the student's progress. The IEP team discussed the student's continued display of "significant aggression," non-compliance and elopement, noting that his behaviors included kicking, hitting, scratching, yelling, screaming, crying, as well as breaking, throwing and knocking over items. The data collected by the school staff reflects that the student had up to 155 occurrences of physical aggression in one day, and up to 10 occurrences of elopement in one hour. The IEP team and the school staff documented that the student is removed from the classroom when his behavior is "unsafe" and "physically aggressive towards [school] staff members," and that he is "provided a time out in the hallway" which results in a loss of instruction from the general education teacher. The school staff's data collection and weekly communication logs document that the student was outside of the classroom for hours at a time, and up to five (5) hours a day. The complainant expressed her objection to the removal of the student to a "desk in the hallway," and noted her belief that he should be spending more time in the classroom (Doc. i, j, l, o and t).
10. At the November 12, 2015 IEP team meeting, the IEP team revised the student's IEP, to include the additional supplementary supports of indirect consultations by an occupational therapist, psychologist and a speech therapist. The IEP team determined that these additional supplementary supports were required in order to provide assistance and support, to all of the school staff working with the student, in determining appropriate strategies to assist the student in accessing the instruction. The IEP team also determined that the student requires "a small group setting throughout his school day and access to crisis intervention and behavioral support," and documented that the services available at the student's current placement at XXXXXXXX ES are not sufficient to meet his needs. The complainant expressed her disagreement, noting her desire for the student to be included with typical peers and the additional difficulty in transition that he would experience if there is a change in his school location. The IEP team decided to reconvene with the Central Office staff who have knowledge of the resources within the school system (Docs. t and u).
11. The IEP team reconvened on December 10, 2015. The IEP team discussed the student's display of 80 - 100 physical aggressions per day, and that his behaviors have continued to result in removals from the classroom, despite the provision of supports since the beginning of the school year. The school-based members of the IEP team discussed that, even with the additional provision of two (2) adults assigned to support the student both inside and outside the classroom, the student is unable to be successful and continues to miss instruction due to his behaviors. The IEP team revised the IEP to reflect an increase

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in occupational therapy services and the addition of direct weekly counseling services (Docs. f and v).

12. At the December 10, 2015 IEP team meeting, the IEP team determined that the student requires a full day of special education services in a more restrictive environment that has the behavior supports that are needed. The complainant disagreed, noting that the student does not demonstrate the same behaviors at home or in his daycare setting. The written summary of the meeting reflects that the IEP team determined that the least restrictive environment in which the IEP can be implemented is a separate special education program operated by a nonpublic special education school within a comprehensive elementary school through a public - private partnership. The AACPS referred the student for placement in accordance with the IEP team's decision, but the student was not accepted in the program (Docs. f, v and w).
13. On January 12, 2016, the school staff convened an emergency IEP team meeting in order to discuss the appropriate placement for the implementation of the student's IEP. The IEP team discussed the student's continued difficulty remaining in the classroom and his minimal academic progress. The school staff reported that, while the frequency of his physical aggression had "decreased slightly," the intensity of the student's aggressions had increased, and had also resulted in injury to several staff members. The IEP team revised the student's IEP to reflect the determination that he requires placement in a nonpublic, separate special education school due to his need for intensive behavioral supports. The complainant disagreed with the placement determination, noting her continued belief that the student's behaviors can be addressed in a setting with non-disabled peers. However, the complainant agreed to visit the three (3) nonpublic schools recommended by the IEP team, and agreed to permit the school system staff to make referrals for the student to the schools. Following the meeting, the AACPS sent referrals to three (3) nonpublic schools requesting the student's admission to their nonpublic separate day special education programs (Docs. f, x - z).
14. On February 12, 2016, the Kennedy Krieger School, Fairmont Campus (KKI Fairmont), staff sent an email to the school system staff stating that their program would be appropriate for the student, and that the admission process would proceed after an in-class visit by the student. The KKI Fairmont staff also reported that the complainant declined to continue the admission process by declining the required in-class visit by the student (Doc. p).
15. On February 24, 2016, the XXXXXXXXXX staff reported that, although the complainant contacted the XXXXXXXXXX staff to schedule a visit, the complainant did not appear on the scheduled date (Doc. p).
16. The IEP team next convened on February 29, 2016. The IEP team discussed that the Least Restrictive Environment for the student continues to be placement in a nonpublic separate special education school with behavioral support throughout the school day. The

complainant continued to request placement for the student in a comprehensive elementary school due to her desire for him to have inclusion opportunities with typical peers in a general education setting. The school - based members of the IEP team explained that the placement requested by the complainant was already determined not to be appropriate due to the frequency and intensity of the student's "significant interfering behaviors," but that it may be an option "once [the student] is better able to manage his behavior." The complainant then requested that the IEP team consider another nonpublic school. The school system staff agreed to investigate the school.⁴ However, the school-based members of the IEP team also "encouraged" the complainant to visit each of the three (3) recommended nonpublic schools, as part of the admission process, in order to determine which school(s) will offer admission to the student. They also discussed that the complainant's participation is required order to complete the "nonpublic process" to obtain a placement for the student⁵ (Docs. p and z).

17. Also at the February 29, 2016 IEP team meeting, the IEP team discussed the student's continued display of interfering behaviors resulting in his removal from the classroom for two (2) to five and a half (5 - 1/2) hours each day. The IEP team agreed that the student will receive "crisis home teaching" due to the interfering behaviors that prevent him from accessing instruction in the school setting.⁶ The IEP team determined the specialized instruction and related services to be provided to the student during "crisis home teaching," and developed a plan for the student's return to school. The school psychologist provided verification of the student's emotional crisis on March 1, 2016, and the school system staff documented approval for home and hospital (HHT) teaching. The IEP team revised the IEP to reflect March 7, 2016 as the start date for the provision of HHT services to the student. The documentation reflects, and the parties agree that there was a delay in the start of the provision of HHT instruction to the student, and that the student did not receive any speech therapy services during the time HHT services were required to be provided. In June 2016, the IEP team determined compensatory services, consisting of forty (40) hours of specialized instruction and four (4) hours of speech and language services, to address the AACPS's failure to provide the student with the required amount of HHT services (Docs. z, aa - dd, gg and interviews with the parties).
18. The IEP team convened on April 11, 2016 to review a neuropsychological assessment privately obtained by the complainant. The report states that the student "will do best" in

⁴ After investigation, the school staff informed the complainant that the requested school is not approved by the MSDE as a nonpublic special education school (Doc. p).

⁵ The IEP team documented that, since the decision on January 12, 2016, to place the student in a nonpublic separate special education school, the complainant had visited only one (1) of the three (3) recommended nonpublic schools (Doc. z).

⁶ The IEP team documented that "crisis home teaching" had been previously recommended, on two (2) occasions, but not accepted by the complainant (Doc. z).

- a small classroom with staff trained to work with students on the Autism spectrum, as he “requires a learning environment that appropriately addresses his social deficits, incredibly sensitive stress response and emotional vulnerabilities, attention weaknesses and related difficulties with executive functioning and language weakness.” The IEP team revised the IEP to include the provision of periodic social skills training as a supplementary support to the student, and determined that all other supports recommended by the private evaluator were either already being addressed in the student’s IEP or are not appropriate for the student (Docs. ee and ii).
19. On April 14, 2016, the school system staff sent an email to the complainant notifying her of the student’s acceptance into two (2) of the recommended nonpublic schools, and offering the complainant the opportunity to choose which school she believes “is most appropriate for the student.” Due to the complainant’s rejection of both schools, the AACPS filed a due process on April 18, 2016, seeking an order to place the student at one (1) of the nonpublic schools. Following the parties’ resolution of the placement determination, the AACPS withdrew the due process complaint, and the student began attending the High Road School of Anne Arundel on May 2, 2016 (Docs. p, ff, hh and kk, and interview with the school system staff).
 20. On June 14, 2016, the IEP team convened to review the report of a neuro-vision rehabilitation evaluation that the complainant privately obtained, dated April 15, 2016. The complainant provided to the report to the school system staff after the filing of this State complaint. The evaluator concluded that the student has multiple deficiencies within his overall visual development, which have resulted in deficiencies in visual alignment, convergence, ocular motor control, visual motor coordination and visual spatial knowledge. The IEP team discussed, and documented, that concerns about the student’s vision difficulty as reported by the private evaluator and the complainant, have not been observed in the classroom. In contrast, the IEP team discussed that, in the classroom, the student has functional vision, and the nonpublic school staff have not observed him squinting or experiencing any visual difficulty in accessing the instruction. While the IEP team also rejected the evaluator’s recommendation for vision therapy, they noted that the evaluator’s recommendations for classroom accommodations are already included in the IEP to address the student’s attention difficulty (Docs. dd and jj, and interviews with the parties).
 21. There is documentation that, while attending XXXXXXXX ES, the student was restrained due to physical aggression towards the school staff, physical aggression to other students, and self-injurious behaviors. Restraint was used two (2) times in September 2015, ten (10) times in October 2015, and three (3) times in November 2015. The IEP team convened within ten (10) business days following each use of restraint. In December 2015, the school staff sent an email to the complainant stating that while the student’s “behavior continues to be a struggle for us on a daily basis,” restraint is used “as a last resort.” The school staff noted that they were attempting to use more blocking,

directing, and soothing with the student when he is aggressive towards others because they observed that his behavior escalated when he was restrained (Docs. h, k, p and ll).

22. The documentation of each use of restraints identifies other less intrusive interventions that have failed or determined inappropriate, includes a description of the precipitating event immediately preceding the behavior that prompted the use of the restraints, the behavior that prompted the use of restraints, and the names of the school personnel who observed the behavior that prompted the use of restraint. The documentation also includes the type of restraint used, the length of time in restraint, the student's behavior and reaction during the restraint, and the name and signature of the administrator informed of the use of restraint. However, the documentation of the use of restraint on September 22, 2015 and October 9, 2015 does not include the signature of the individual who implemented the restraint. Additionally, the documentation of the use of restraint on September 22, 2015, and October 9 and 18, 2015 reflects that the student's mother was not provided with oral or written notification within twenty- four (24) hours of the restraint. The school system staff report that, during the time period covered by this investigation, the AACPS had in effect a regulation addressing procedures for the use of physical restraint, and that their local procedures required written notification to parents within twenty-four (24) hours of each use of restraint with a student⁷ (Doc. ll and interview with the school system staff).
23. There is documentation that the school system staff who implemented restraint with the student have current certifications of training in the use of nonviolent crisis intervention (Docs. ll and mm).

DISCUSSION/CONCLUSIONS:

Allegation #1 The Use of Exclusion

Exclusion is defined as the removal of a student to a supervised area for a limited period of time during which the student has an opportunity to regain self-control and is not receiving instruction including special education, related services, or support. The school personnel may use exclusion if the student's behavior unreasonably interferes with the student's learning or that of others, or if the behavior constitutes an emergency and exclusion is necessary to protect the student or others from imminent, serious harm after less intrusive, non-physical intervention have failed or been determined inappropriate (COMAR 13A.08.04.04).

School personnel must ensure that each period of exclusion is appropriate to the developmental level of the student and the severity of the behavior and does not exceed thirty (30) minutes.

⁷ The school system staff report that the AACPS regulation in effect at the time is not available for review because the school system is considering revisions to the regulation and expected to have an approved revised regulation on the topic very soon. However, the school system staff report that the proposed AACPS regulation continues the requirement for school personnel to notify parents, in writing, within twenty-four (24) hours of each time restraint is used (Doc. nn and interview with the school system staff).

The complainant also alleges that the student was not consistently provided instruction in the general education classroom by a general education teacher, and that he was not consistently seated next to the general education teacher.

Based on the Findings of Facts #5 - #11 and #17, the MSDE finds that, while the school staff made efforts to include the student in the classroom in order to provide specialized instruction by the general education teacher and seating next to the teacher, as required by the IEP, the student's unsafe behaviors resulted in his removal from the classroom for extended periods of time. Based on the same Findings of Facts, the MSDE finds that the school staff did not have the opportunity to provide the student with consistent specialized instruction in the general education classroom by a general education teacher because the student's interfering behaviors prevented him from being available for instruction, and that, in December 2015, the IEP team determined that the student requires a more restrictive placement in a separate special education school. Therefore, the MSDE does not find a violation with regard to these aspects of the allegation.

Allegations #3 and #4 Identifying and Addressing the Student's Vision and Behavioral Needs and Determining the Least Restrictive Environment

The Student's Vision and Behavioral Needs

The public agency must offer each student with a disability a Free Appropriate Public Education through an IEP that includes special education and related services that address the student's identified needs. 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. In the case of a child whose behavior impedes his or her learning or that of others, the IEP team must consider positive behavioral interventions and supports, and other strategies, to address that behavior (34 CFR §§300.101, .320 and .324).

The United States Department of Education, Office of Special Education Programs (OSEP), requires that, during the investigation of an allegation that a student has not been provided with an appropriate educational program under the IDEA, the State Educational Agency (SEA) review the procedures that were followed to reach determinations about the program. The SEA must also review the evaluation data to determine if decisions made by the IEP team are consistent with the data (OSEP Letter #00-20, July 17, 2000 and *Analysis of Comments and Changes to the IDEA*, Federal Register, Vol. 71, No. 156, p.46601, August 14, 2006).

When it is determined that the public agency has not followed proper procedures, the SEA can require it to ensure that the IEP team follows proper procedures to review and revise, as appropriate, the program to ensure that it addresses the needs identified in the data. The SEA may not, however, overturn an IEP team's decisions when proper procedures have been followed and

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there is data to support the team's decisions. The OSEP indicates that parents may challenge an IEP team's decisions by filing a due process complaint or requesting mediation to resolve the dispute (OSEP Letter #00-20, July 17, 2000 and *Analysis of Comments and Changes to the IDEA, Federal Register*, Vol. 71, No. 156, p.46601, August 14, 2006).

In the case, the complainant alleges that the student has "serious vision issues" that are not addressed by the IEP. She also alleges that the IEP did not appropriately address the student's behavioral needs because he was excluded from the classroom for extended periods of time when he attended XXXXXXXX ES (Doc. oo and interviews with the complainant).

Based on the Finding of Fact #20, the MSDE finds that the IEP team has considered all of the evaluation data, including the results of the private neuro-visual rehabilitation assessment and the complainant's concerns, when identifying the student's needs. Based on the same Finding of Fact, this office finds that, while the private assessment and the public agency data are not consistent with each other, the public agency data supports the IEP team's decision. Therefore, the MSDE does not find that a violation has occurred with respect to this aspect of the allegation.

Based on the Findings of Facts #6, #7, #9, #10 - #13, #16 and #17, the MSDE finds that, during the time that the student attended XXXXXXXXXXXX, the IEP team convened several meetings to review the "significant" behaviors that interfered with his ability to remain in the classroom. Based on the Findings of Facts #6, #8, #10, #11 and #13, the MSDE finds that, in an effort to address the student's continued display of interfering behaviors, the IEP team continued to revise the student's IEP, to reflect the development of a Behavior Intervention Plan, and the requirement of additional supplementary supports and related services. Further, based on the Findings of Facts #12 and #16, the MSDE finds that the IEP team determined that the student requires a full day of special education services in a more restrictive placement that has the needed behavioral supports. Therefore, the MSDE also does not find that a violation has occurred with respect to this aspect of the allegation.

Least Restrictive Environment (LRE)

The public agency must ensure that, to the maximum extent appropriate, students with disabilities are educated with students who are nondisabled. The removal of a student with a disability from the regular educational environment may occur only if the nature and severity of the disability is such that education in regular classes, with the use of supplementary aids and services, cannot be achieved. The term "regular educational environment" includes regular classrooms and other settings in schools, such as lunchrooms and playgrounds (34 CFR §300.114 and *Analysis of Comments and Changes to the IDEA, Federal Register*, Vol. 71, No. 156, p.46585, August 14, 2006).

Each student's educational placement must be determined on an individual case-by-case basis depending on each student's unique educational needs and circumstances. A student's placement may not be based on the category of the student's disability (*Analysis of Comments and Changes to the IDEA, Federal Register*, Vol. 71, No. 156, p.46468, August 14, 2006).

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In this case, the complainant alleges that the placement of the student in a separate special education school is overly restrictive, that it is not his Least Restrictive Environment (LRE). She alleges that the school staff did not make sufficient effort to provide the supports necessary for the student to remain in the general education classroom at XXXXXXXXXXXX, and that the student requires opportunities for inclusion with typically developing peers.

Based on the Findings of Facts #5 - #8, #10 and #11, the MSDE finds that the IEP team considered, and attempted to provide, additional supplementary aids and supports in the general education classroom prior to determining that the student required placement in a more restrictive environment. Based on the Findings of Facts #10 - #13, the MSDE finds that the IEP team also considered placements in less restrictive environments with the provision of supplementary aids and supports and services, and determined that the IEP could not be implemented in those settings based on the student's need for intensive behavior supports. Therefore, the MSDE finds that the school system staff followed proper procedures when it determined that the LRE for the student is placement in a nonpublic, separate special education school, and does not find a violation occurred with regard to this violation.

Allegation #5 Provision of Home and Hospital Teaching Services to the Student

Upon receipt of the verification of the need for HHT services for a student with a disability, the IEP team must follow specific steps to ensure that the student receives appropriate services. The IEP team must review and revise the IEP, as appropriate, to determine the instructional services to be provided and to develop a plan for returning the student to a school-based program. Placement in the home is the most restrictive environment along the continuum of placements because it does not permit instruction to take place with other students. Therefore, HHT services are intended to be provided for a short time while the IEP team develops a plan to assist the student to return to a school-based program (COMAR 13A.05.01.10).

Based on the Finding of Fact #17, the MSDE finds that the parties have acknowledged that the student was not provided with the required amount of specialized instruction and speech therapy during the time that the IEP required HHT services. Based on the same Finding of Fact, notwithstanding the violation, the MSDE finds that corrective action has been taken to address the violation.

Allegation #6 The Use of Restraint with the Student

Physical restraint means the use of physical force, without the use of any device or material, that restricts the free movement of all or a portion of a student's body. Physical restraint does not include: briefly holding a student to calm or comfort the student; holding a student's hand or arm to escort the student safely from one area to another; moving a disruptive student who is unwilling to leave the area if other methods such as counseling have been unsuccessful; or intervening in a fight (COMAR13A.08.04.02B(12)).

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Each time a student is restrained, school personnel must document the other less intrusive interventions that have failed, or been determined inappropriate, the precipitating event immediately preceding the behavior that prompted the use of restraint, the behavior that prompted the use of restraint, the names of the school personnel who observed the behavior that prompted the use of restraint, and the names and signatures of the staff members implementing and monitoring the use of restraint (COMAR 13A.08.04.05A(3)(a)).

The documentation must include a description of the restraint event, including the type of restraint; the length of time in restraint; the student's behavior and reaction during the restraint; and the name and signature of the administrator informed of the use of restraint (COMAR 13A.08.04.05A(3)).

Each public agency must provide professional development and training to designated school personnel on the appropriate implementation of the policies and procedures related to the use of restraint. The professional development and training must also include current professionally accepted practices and standards regarding positive behavioral intervention strategies and supports, functional behavioral assessment and behavior intervention planning, exclusion, restraint, and seclusion (COMAR 13A.08.04.06C(1)).

In this case, the complainant alleges that she was not provided with documentation each time that restraint was used with the student, and that the reports of the restraint do not provide "details" of the events that resulted in the use of restraint. The complainant also alleges that the use of restraints with the student was excessive, and expresses concern that the staff who implemented the restraint are trained in the use of non-violent crisis interventions, specifically TACT II (Therapeutical Aggression Control Techniques Volume II) (Doc. oo).

Based on the Findings of Facts #21 and #22, the MSDE finds that the reports documenting the use of restraint with the student include detailed information about the precipitating event immediately preceding the behavior that prompted the use of restraint, and also identify the behavior that prompted the use of restraint. Therefore, the MSDE does not find a violation with regard to this aspect of the allegation.

Based on the Finding of Fact #23, the MSDE finds that the school system staff who implemented restraint with the student have current certificates documenting their training in the use of nonviolent crisis intervention. Further, there is no legal requirement for the school staff to be trained in the use of TACT II, and there is also no requirement that limits the number of times that restraint can be used with a student. Therefore, the MSDE also does not find a violation occurred with respect to these aspects of the allegation.

However, based on the Finding of Fact #22, the MSDE finds that the school staff did not ensure that the documentation of the use of restraint on September 22, 2015, and October 9, 2015, included the required signatures, and that the documentation of the use of restraint on September 22, 2015 and October 9 and 18, 2015, were provided to the complainant within twenty - four (24)

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hours. Therefore, the MSDE finds a violation occurred with respect to these aspects of the allegation.

CORRECTIVE ACTIONS/TIMELINE:

Student-Specific

The MSDE requires the AACPS to provide documentation by August 1, 2016, that the AACPS has provided the complainant with the documentation of the use of restraint on September 22, 2015, and October 9 and 18, 2015.

School-Based

The MSDE requires the AACPS to provide documentation by September 1, 2016, of the steps it has taken to ensure that XXXXXXXXXXXXXXXXXXXX complies with the State provisions, and AACPS regulations, governing the use of physical restraint with a student.

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 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 parties 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

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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

c: George Arlotto
Bobbi Pedrick
Alison Barmat
XXXXXXXXXX
Dori Wilson
Anita Mandis
K. Sabrina Austin