



February 17, 2017

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

RE: XXXXX
Reference: #17-072

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 December 21, 2016, the MSDE received a complaint from Mr. XXXXXX hereafter, “the complainant,” on behalf of his son, the above-referenced student. In that correspondence, the complainant alleged that the Anne Arundel County Public Schools (AACPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to the above-referenced student.

The MSDE investigated the following allegations:

1. The AACPS has not ensured that the Individualized Education Program (IEP) addresses the student’s social, emotional, and behavioral needs since the start of the 2016-2017 school year, in accordance with 34 CFR §300.320 and .324.
2. The AACPS did not ensure that the student was provided with special education instruction by both general and special education teachers, as required by the IEP, from August, 2016 to December, 2016, in accordance with 34 CFR §300.101 and .323.

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3. The AACPS has not ensured that all of the student's needs for supports, including both high and low tech supports to assist with maintaining organization and writing tasks, have been identified and addressed since the start of the 2016-2017 school year, in accordance with 34 CFR §300.320 and .324.
4. The AACPS has not ensured that data tracking reports have been provided throughout the 2016-2017 school year, as required by the IEP, in accordance with 34 CFR §§300.101 and .323
5. The AACPS did not ensure that the student was consistently provided with the accommodations and supplementary aids and services required by the IEP from August, 2016 to December, 2016, in accordance with 34 CFR §§300.101 and .323.

INVESTIGATIVE PROCEDURES:

1. On December 21, 2016, the MSDE sent a copy of the complaint, via facsimile, to Ms. Bobbi Pedrick, Director of Special Education, AACPS and Ms. Alison Barmat, Program Manager of Legal Issues of Compliance, AACPS.
2. On December 21, 2016, Ms. Anita Mandis, Section Chief, Family Support and Dispute Resolution Branch, MSDE, conducted a telephone interview with the complainant and identified the allegations for investigation.
3. On December 23, 2016, the MSDE sent correspondence to the complainant 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.
4. On January 3, 4, 5, 6, 9, 11, 13, 17, 24, 25, 26, 27, 30, 31, 2017, and February 1, 6, 15, and 16, 2017, the complainant contacted Ms. Sharon Floyd, Complaint Investigator, MSDE, regarding issues related to the provision of documents for consideration, ongoing issues and correspondences with the school system.
5. On January 7, 2016, Ms. Sabrina Austin, Complaint Investigator, MSDE, and Ms. Floyd, conducted a site visit at XXXXXXXXXXXXXXXXXXXX to review the student's educational record and interviewed the following school staff:
 - a. Ms. XXXXXXXXX, Assistant Principal;
 - b. Ms. XXXXXXXXXXXXXXX, Special Education Department Chairperson;
 - c. Mr. XXXXXXXXX, School Psychologist;
 - d. Ms. XXXXXXXXX, Case Manager; and
 - e. Mr. XXXXXXXXXXXXXXX, Principal.

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Ms. Alison Barmat, Program Manager, Compliance and Legal Issues, AACPS, attended the site visit as a representative of the AACPS and to provide information on the school system's policies and procedures, as needed.

6. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
 - a. Report of a private psychological assessment, dated January 24, and 25, 2013;
 - b. Report of psychological assessment, dated May 25, 2016;
 - c. IEP, dated June 29, 2016;
 - d. Written summary of an IEP team meeting, dated June 29, 2016;
 - e. Letter from the complainant to the school staff, dated August 30, 2016;
 - f. Electronic mail (email) message from the school staff to the complainant, dated August 30, 2016;
 - g. Letter from the complainant to the school staff, dated September 3, 2016;
 - h. Letter from the complainant to the school staff, dated September 3, 2016;
 - i. Letter from the complainant to the school staff, dated September 7, 2016;
 - j. Email messages between the complainant and the school staff, dated September 12, 2016;
 - k. Letter from the complainant to the school staff, dated September 12, 2016;
 - l. Letter from the complainant to the school staff, dated September 15, 2016;
 - m. Email messages from the complainant to the school staff, dated September 19, 2016;
 - n. Bullying, Harassment or Intimidation Reporting Form completed by the complainant, dated September 19, 2016;
 - o. Letter from the complainant to the school staff, dated September 19, 2016;
 - p. Letter from the school staff to the complainant, dated September 19, 2016;
 - q. Letter from the complainant to the school staff, dated September 19, 2016;
 - r. Email messages between the complainant and the school staff, dated September 19, 2016;
 - s. Email messages from the complainant to the school staff, dated September 20, 2016;
 - t. Email messages from the complainant to the school staff, dated September 20, 2016;
 - u. Email messages from the complainant to the school staff, dated September 20, 2016;
 - v. Email messages from the complainant to the school staff, dated September 20, 2016;
 - w. Referral and consent for AT observation and FBA, dated September 20, 2016;
 - x. Referral and consent for AT observation and FBA, edited by the complainant, dated September 28, 2016;
 - y. Email messages from the complainant to the school staff, dated September 19, 2016;
 - z. Email messages between the complainant and the school staff, dated

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- September 19, and 20, 2016;
- aa. Email messages between the complainant and the school staff, dated September 20, 2016;
- bb. Email messages between the complainant and the school staff, dated September 20, 2016;
- cc. Email messages between the complainant and the school staff, dated September 20, and 21, 2016;
- dd. Email messages between the complainant and the school staff, dated September 20, and 21, 2016;
- ee. Letter from the complainant to the school staff, dated September 21, 2016;
- ff. Email messages between the complainant and the school staff, dated September 21, 2016;
- gg. Written notice of an IEP team meeting, dated September 21, 2016;
- hh. Email messages between the school staff and the complainant, dated September 22 through October 11, 2016;
- ii. Email messages from the AACPS and the complainant, dated September 23, 2016;
- jj. Email messages between the AACPS and the complainant, dated September 23, 2016;
- kk. Letter from the complainant to the school staff, dated September 26, 2016
- ll. Letter from the complainant to the school staff, dated September 28, 2016;
- mm. Letter from the complainant to the school staff, dated September 28, 2016;
- nn. Email messages between the complainant and the school staff, dated September 26, through 30, 2016;
- oo. Email messages between the complainant and the school staff, dated October 3, through 5, 2016;
- pp. Prior written notice of the October 5, 2016 IEP team meeting;
- qq. Email messages between the complainant and the school staff, dated October 6, through December 27, 2016;
- rr. Letter from the school staff to the complainant, dated October 31, 2016;
- ss. Email messages between the complainant and the school staff, dated November 4, through 21, 2016;
- tt. Letter from the complainant to the school staff, dated November 9, 2016;
- uu. Letter from the complainant to the school staff, dated November 10, 2016;
- vv. Email messages between the AACPS and the complainant, dated November 11, 2016;
- ww. Letter from the complainant to the school staff, dated November 16, 2016;
- xx. Email messages between the AACPS and the complainant, dated November 17, 2016;
- yy. Email messages between the AACPS and the complainant, dated November 17, through 29, 2016;
- zz. Email messages between the AACPS and the complainant, dated November 28, 2016;
- aaa. Letter from the school staff to the complainant, dated November 29, 2016;

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- bbb. Prior written notice of the November 30, 2016 IEP team meeting;
- ccc. Email messages between the complainant and the school staff, dated December 7, 2016;
- ddd. Letter from the complainant to the school staff, dated December 9, 2016;
- eee. Letter from the complainant to the school staff, dated December 9, 2016;
- fff. Email messages between the AACPS and the complainant, dated December 12, 2016;
- ggg. Email messages between the school staff and the complainant, dated December 20, 2016;
- hhh. Email messages between the complainant and the school staff, dated December 20, 2016;
- iii. Email messages between the AACPS and the complainant, dated December 12, 14, and 22, 2016;
- jjj. Email message from the complainant to the MSDE, dated January 3, 2017;
- kkk. Email message from the complainant to the MSDE, dated January 4, 2017;
- lll. Email message from the complainant to the MSDE, dated January 5, 2017;
- mmm. Email message from the complainant to the MSDE, dated January 5, 2017;
- nnn. Email message from the complainant to the MSDE, dated January 5, 2017;
- ooo. Email message from the complainant to the MSDE, dated January 6, 2017;
- ppp. Email message from the complainant to the MSDE, dated January 6, 2017;
- qqq. Email message from the complainant to the MSDE, dated January 6, 2017;
- rrr. Email message from the complainant to the MSDE, dated January 9, 2017;
- sss. Email messages between the AACPS and the complainant, dated January 10, and 11, 2017;
- ttt. Email message from the complainant to the MSDE, dated January 11, 2017;
- uuu. Email message from the complainant to the school staff, dated January 11, 2017;
- vvv. Email message from the complainant to the MSDE, dated January 13, 2017;
- www. Email message from the complainant to the MSDE, dated January 17, 2017;
- xxx. Email message between the complainant to the school staff, dated January 19, 2017 through January 26, 2017;
- yyy. Email message from the complainant to the MSDE, dated January 24, 2017;
- zzz. Email message from the complainant to the MSDE, dated January 25, 2017;
- aaaa. Email message from the complainant to the MSDE, dated January 25, 2017;
- bbbb. Email message from the complainant to the MSDE, dated January 26, 2017;
- cccc. Email message from the complainant to the MSDE, dated January 26, 2017;
- dddd. Email message from the complainant to the MSDE, dated January 26, 2017;
- eeee. Email message from the complainant to the MSDE, dated January 27, 2017;
- ffff. Email message from the school staff to the MSDE, dated January 27, 2017;
- gggg. Email message from the complainant to the MSDE, dated January 30, 2017;
- hhhh. Email message from the complainant to the MSDE, dated January 31, 2017;
- iiii. Email message from the complainant to the MSDE, dated January 31, 2017;
- jjjj. Email message from the complainant to the MSDE, dated January 31, 2017;
- kkkk. Email message from the school staff to the MSDE, dated January 31, 2017;

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- llll. Email message from the complainant to the MSDE, dated February 1, 2017;
- mmmm. Email message from the complainant to the MSDE, dated February 1, 2017;
- nnnn. Email message from the complainant to the MSDE, dated February 1, 2017;
- oooo. Email message from the school staff to the MSDE, dated February 1, 2017;
- pppp. Email message from the complainant to the MSDE, dated February 6, 2017;
- qqqq. Email message from the complainant to the MSDE, dated February 6, 2017;
- rrrr. Email message from the school staff to the MSDE, dated February 14, 2017;
- ssss. Email message from the complainant to the MSDE, dated February 15, 2017;
- tttt. Email message from the complainant to the MSDE, dated February 15, 2017;
- uuuu. Email message from the school staff to the MSDE, dated February 15, 2017;
- vvvv. Audio recordings of the IEP team meetings, dated October 5, 2016 and November 30, 2016;
- vvvv. Correspondence from the complainant alleging violations of the IDEA, received by the MSDE on December 20, 2016;
- www. Reports of health room visits, dated August 29, 2016, September 9, 2016, and November 18, 2016;
- xxxx. Log of counseling services, dated June 16, 2016 through January 26, 2017;
- yyyy. Email message between the school staff and the student's mother, dated August 25, 2016;
- zzzz. Email message between the school staff and the complainant, dated September 1, 2016;
- aaaa. Student's safety protocol, dated September 2, 2016;
- bbbb. Student's schedule for the 2016-2017 school year;
- cccc. Collaborative planning team meeting schedule for the 2016-2017 school year;
- dddd. Email message between the school staff and the complainant, dated August 26, 2016;
- eeee. Weekly behavior charts for the 2016-2017 school year;
- ffff. Student's first quarter report card, first quarter assignment scores;
- ggggg. Email message from the complainant to school staff, dated October 17, 2016;
- hhhhh. IEP quarterly progress reports and data, dated October 31, 2016 and January 20, 2017;
- iiii. Email message from the complainant to school staff, dated October 29, 2016 through November 29, 2016;
- jjjj. Log of speech/language services, August 29, 2016 through January 26, 2017; and
- kkkk. BIP distribution documentation, dated December 6, 2016.

BACKGROUND:

The student is twelve (12) years old and currently attends XXXXXXXXXXXXXXXXXXXX. He is identified as a student with an Other Health Impairment under the IDEA due to an Attention Deficit Hyperactivity Disorder-Combined Type, Developmental Coordination Disorder (dysgraphia), Anxiety Disorder, and a Pervasive Developmental Disorder, and has an IEP that requires the provision of special education instruction and related services (Docs. a, b and c).

There is documentation that the complainant was provided with written notice of the procedural safeguards during the time period addressed by this investigation (Doc. a).

ALLEGATIONS #1, #3 AND #5

**ADDRESSING THE STUDENT'S SOCIAL,
EMOTIONAL, AND BEHAVIORAL NEEDS,
PROVISION OF GENERAL AND SPECIAL
EDUCATION TEACHERS AND PROVISION
OF DATA TRACKING REPORTS**

FINDINGS OF FACTS:

IEP Requirements – Social, Emotional, and Behavioral Needs and Data Reports

1. The IEP in effect at the start of the 2016-2017 school year indicates the following:

The student has social, emotional, and behavioral needs in “managing frustration and anxiety, interacting with peers, math fluency and problem solving, and organizing his thoughts to complete written language tasks.” In addition, the student needs “structured practice in working with peers and practicing coping skills in a more private setting.” The student is on grade level in reading and math (Doc. c).

2. The IEP includes annual goals for the student to increase learning behaviors by working cooperatively in groups, improving his use of social pragmatic language and peer interactions by expressing his frustration, using graphic organizers when writing to increase output, making logical inferences when given a scenario, solving math problems by explaining problem solving steps and showing all work, and identifying triggers of his frustration, identifying coping strategies, and using coping strategies when frustrated to be able to remain engaged in instruction (Doc. c).
3. The IEP requires the provision of periodic social skills training, and three (3) thirty (30) minute sessions of psychological services per month to assist the student with being able to respond to problematic situations in an appropriate manner. The IEP also requires direct special education instruction to assist with math fluency and problem solving, organization of written assignments, and requires assistance with peer interaction, focusing and managing his emotions in the classroom settings. The IEP requires the use of a home-school communication system for weekly reports of the student’s behavior and the provision of reports of the student’s progress toward the IEP goals on a quarterly basis. The IEP states that the special education instruction will be provided by both general and special education teachers in all core classes. It reflects that two (2) hours of special education instruction is to be provided each week per subject to address learning behaviors, math and writing (Doc. c).

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4. There is documentation that the student received special education classroom instruction in the core classes between August 22, 2016 and August 26, 2016 by a general education teacher only. There is documentation that the student received his special education case management, counseling, psychological services and related services since the start of the 2016-2017 school year (Interview with school staff and Docs. f, xxxx, ccccc, fffff, hhhhh, and jjjjj).
5. On August 24, 2016,¹ the school psychologist's contact log indicates he provided the student with a flash pass,² ensuring that the student is aware of "the identity of key staff and locations of their offices in case of a behavioral incident or just needing to talk." On August 26, 2016, the school psychologist and special education case manager documented meeting with the student to review his IEP and goals. The student's class schedule reflects that it was changed on August 29, 2016 so that the student was placed in core academic classes taught by both general education and special education teachers (Docs. xxxx, and bbbbb).

Weekly Data Reports

6. Weekly data reports including behavioral data based on a combination of the student's coping strategies and the social, emotional and behavioral objectives on his IEP have been generated since August 29, 2016. There is documentation that the data reports were provided to the complainant and the student's mother electronically and through copies sent to them via the student (Doc. eeeee and interviews with school staff).
7. The correspondence among school staff document that the general educators and special educators discussed implementation of the student's safety protocol³ and behavioral data collection during the bi-weekly collaborative planning meetings held on August 24, and 31, 2016, and September 7, 21, and 14, 2016 (Docs. aaaaa, and ccccc).

August 29, 2016 Student Behavioral Incident

8. On August 29, 2016, the report from the school nurse stated that the student "threw himself on the floor flailing" when asked to work in cooperative groups during Language Arts class. Her report indicated that a schedule change had occurred for all of the students on that day. The school nurse also reported that the student suffered from a "rug burn", was given an ice pack and returned to class (Doc. wwwww).

¹ In AACPS grade 6 students reported to school on August 23, 2016 (www.AACPS.calendar.org).

² A flash pass is a card that is used to assist the student to manage frustration and anxiety in a nonverbal manner to allow the student to communicate to the teacher the need to talk, go to a quiet space, or to the guidance department (Interview with school staff).

³ A safety protocol is an agreed upon individual set of steps for the student that explains the appropriate school behaviors and procedures to follow for consistent access to instruction (Interview with school staff).

9. On August 30, 2016, the complainant sent correspondence to the school staff including the principal, requesting that an Functional Behavioral Assessment (FBA) be conducted by a board certified behavioral analyst, that both parents be called and notified in the event the student experiences another behavioral incident and requested that a behavioral protocol be created for future behavioral incidences involving the student. On the same date, school staff corresponded to the complainant that notification had been provided to necessary staff about the incident, that the IEP chairperson was made aware of the FBA request, the plan to update the safety protocol would take place at the September 2, 2016 previously scheduled parent conference and the school nurse was informed of the complainant's request for the report involving the behavioral incident. On August 31, 2016, the school psychologist documented meeting with the student to discuss counseling goals, confidentiality, identifying triggers and reviewing the behavioral incident that took place on August 29, 2016 (Doc. xxxx).

September 2, 2016 Parent/Staff Conference

10. At the September 2, 2016 parent and school staff conference, the complainant, the student's mother, the assistant principal, the case manager, the special education department chairperson, the school psychologist, and the complainant's advocate met to discuss the student's transition to middle school, and his safety protocol. They also reviewed the draft of a behavioral data collection system created by the case manager which identified four (4) targeted behavioral areas including listening with limited prompts, refraining from interrupting others with limited prompts, accepting other's point of view and using learned coping strategies when frustrated (Doc. f).
11. At the conference, the school psychologist reported that the safety protocol is in place to interrupt and disrupt the student's negative pathway of behaviors so that he is able to remain or return to the learning environment with little interruption to instruction and it also serves as a preventative measure to help the student refrain from self-injurious behaviors. The conference participants discussed revising the safety protocol using a flow chart format and picture symbols to allow the student to be able to follow it even when he is experiencing extreme emotions, frustration, and anxiety (Docs. aaaaa).
12. On September 3, 2016, the complainant sent correspondence to the school staff "addressing the issues that he felt required follow-up from the XXXXXXXXXX (XX) staff." He reiterated his request for the FBA to be conducted by a board certified behavioral analyst, he requested the incident report related to the August 29, 2016 behavioral incident involving the student, asked questions related to data collection and made a request for an IEP team meeting to address his concerns. In correspondence to school staff dated September 7, 2016, the complainant reiterated his request to have an IEP team meeting to address his concerns regarding the implementation of his son's IEP (Docs. g, h, and i).

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13. On September 9, 2016, the school psychologist provided the safety protocols to all of the student's teachers with instructions. The updated safety protocol was also provided to the complainant and the student's mother on that same date, requesting that the discussion of possible changes take place at the student's next IEP team meeting. The student's safety protocol was reformatted into a flow chart with age-appropriate emoji's and fewer words to ensure accessibility for the student in all states of anxiety and frustration (Doc. aaaaa).

September 9, 2016 Student Behavioral Incident

14. On September 9, 2016, the school nurse reported that the student had "an extended period of emotional upset (loud crying) for at least 20 minutes, resulting in an abrasion on his forehead while in the guidance office while his father was trying to calm and console him. On that same date, prior to the behavioral incident, the school psychologist documented his meeting with the student to review his safety protocol, asking for his input and practicing potential situations. After the incident, the school psychologist met again with the student to debrief and assist with calming techniques (Docs. xxxx, aaaaa, and interview with school staff).
15. On September 12, 2016, the complainant sent correspondence to the school staff indicating that he had received the incident reports from the school nurse for the behavioral events occurring on August 30, and September 9, 2016. He stated his concern that "the appearance of uneven implementation of the student's IEP is contributing greatly to the student's anxiety levels during the school day." The complainant stated that "the need for an FBA by a board certified behavioral analyst is warranted based on the most recent incident of self-harm." On the same date, the case manager sent correspondence to the complainant explaining how to get the incident reports released from the school nurse (Doc. j and k).
16. On September 15, 2016, the complainant sent correspondence to the school staff requesting information on the student's behavioral progress, the school psychologist's schedule for meetings with the student, a point of contact for the student in event of a crisis, a status update on the implementation of accommodations, supplementary aids and supports, and how the student's progress is being tracked on IEP goals (Doc. l)
17. On September 19, 2016, the student's teacher sent correspondence to the complainant and the student's mother, informing them that the student requested the entire math packet for next week's homework rather than the reduced workload packet he usually received. Thirteen (13) emails ensued between the complainant and the student's case manager, the complainant concerned that the student was refusing an accommodation which could ultimately lead to increased anxiety levels. The student's mother indicated her agreement with the student's request, citing that the student finished his homework very early the week before, and suggested the additional page of math work might be marked as

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optional. On that same date, the school psychologist documented his meeting with the student “to conduct a social thinking problem activity that discusses different types of triggers and gauges reactions and feelings associated with those problems” (Docs. m, o, q, and r).

September 19, 2016 Student Behavioral Incident

18. On September 19, 2016, the assistant principal sent correspondence to the student’s parents stating that the student was involved in an incident involving improper physical contact with another student and as a result, the student was assigned to the *In School Intervention* (ISI) room for the remainder of this day and the next day where he would receive his instruction and special education services (Doc. p).
19. On September 19, 2016, the complainant filed a *Bullying, Harassment or Intimidation Reporting Form* with the school related to the incident that occurred on September 19, 2016 between the student and three other students in the cafeteria. On September 26, and 30, 2016, the principal sent correspondence to the complainant, inviting him to meet to discuss the disciplinary event that occurred on September 19, 2016. On September 28 and 30, 2016, the complainant sent correspondence to the principal declining the invitation, stating that “he wants the answers to his questions in writing first, then they may set up a time to meet” (Doc. n, and nn).
20. On September 19, 2016, the complainant sent correspondence to the school staff requesting the status of any psychological sessions held thus far, suggesting a daily check in be provided by guidance with the student and reiterated his request for an FBA to be conducted by a board certified behavioral analyst. On the same date, the school psychologist sent correspondence to the complainant, detailing his six (6) contacts with the student since August 24, 2016 and earlier that same day (Docs. o, p, q, r, y, z and xxxx).
21. On September 20, 2016, the complainant sent correspondence to the school staff with the selected date for the next IEP team meeting and requested that the notification be sent electronically and by US Postal service to both addresses on file (Doc. s).
22. Also on September 20, 2016, school staff sent to the complainant, a referral, student evaluation plan and a consent form to begin the FBA process. On September 21, 2016, the complainant corresponded with school staff his concerns regarding the FBA and reiterated his recommendation that the FBA be conducted by a board certified behavioral analyst along with edits to the referral forms documenting his requests for assessments. The school psychologist’s log of contacts indicated that he provided counseling services to the student on September 21, 23 and 28, 2016 (Doc. t, u, v, ff and xxxx).
23. On September 23, 2016, the program manager for compliance sent correspondence to the

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complainant denying his request for a board certified behavioral analyst to conduct the FBA, citing the school psychologist's extensive training, qualifications, and experience as the basis for the denial. She also cited the numerous resources within the school system should the school psychologist deem it necessary to seek consultation. The complainant sent correspondence to the school staff requesting that the school system review the request again "after being brought up to date on all of the documentation, then make a determination after having the benefit of the entire picture." The school psychologist's log of contacts indicated that he provided counseling services to the student on September 23, 2016 after receiving correspondence from the complainant that the student may be more anxious because school pictures were to be taken that day (Doc. ii and xxxx).

24. On September 28, 2016, the complainant sent correspondence to the school staff reiterating his concerns about the format of AACPS referral forms, the edits he has made, and the need for follow-up to his previous correspondences referencing his concerns (Docs. ll and mm).

September 30, 2016 Student Behavioral Incident

25. On September 30, 2016, the school staff reported "the student had a minor behavioral incident while in his fourth period class." The teacher followed the safety protocol, resulting in the student being able "to remain in class and transition into the next class on time and with no impact on the rest of his day." On September 30, 2016, October 3 and 5, 2016, the complainant sent correspondences to the school staff suggesting the student's teachers "review some transitional strategies, be reminded of the student's IEP, make consistent use of the student's IEP supports, allow guidance staff to coach the student, and follow up with the parents on this issue by providing additional steps taken by the school staff to prevent the chain reactions from happening later in the day." The school psychologist's log of contacts indicated that he provided counseling services to the student on October 3, 2016 (Docs. nn and xxxx).

October 5, 2016 IEP Team Meeting

26. At the IEP team meeting held on October 5, 2016, the IEP team considered revising the safety protocol with pictures, however, agreed to get the student's input so that the protocol is age appropriate and accessible. The school based IEP team members and the student's mother were in agreement for the school psychologist to conduct the FBA and develop a BIP to address the student's behavioral concerns, stating that the student's behaviors do not demonstrate the intensity requiring a board certified behavior analyst. The complainant disagreed with the IEP team's determination, stating that a board certified behavioral analyst's expertise is needed for his son. The IEP team proposed to continue using the goal tracking and progress reporting systems, recommending a review after the first quarter marking period. The complainant requested the two incident reports

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from the school nurse and was informed that he needs to go directly to the health suite to make the request (Docs. pp).

27. The audio recording of the October 5, 2016 IEP team meeting reflects that the IEP team discussed the need for a daily check-in with the student to address his anxiety with transitioning in the morning. The special education case manager reported checking in daily with the student every morning and has a plan for coverage in event of her absence. A school-based member of the team defined a behavioral incident which would require additional data, if it involves the student missing instruction for more than five (5) minutes, along with any incidences involving harming himself or others. The complainant stated that there is a need for more formal data reflecting the periods when the student is out of the classroom due to a behavioral incident and requested the incident reports for the two (2) incidences of self-harm and the one (1) instance when another student was harmed. The general and special education teacher stated that the student is achieving and progressing with good grades and his intellect and questions the students asks are of a high level (Review of the audio recording of the October 5, 2016 IEP team meeting and Doc. vvvv).
28. On October 7, 2016, the school psychologist met with the student, reviewed the safety protocol, requesting his input for revision. The correspondence between the complainant and the school psychologist, dated October 10, 2016, reflects that the complainant expressed that the student may require additional sessions to process and understand the safety protocol and invited the school psychologist to reference a letter from the student's doctor dated April 2016. The email also reflects that the complainant is concerned that the school psychologist needs to simplify the language, train the student on the protocol, walk the student through the steps and role play the safety protocol so that it's automatic and second nature to the student. The school psychologist's log of contacts indicated that he provided counseling services to the student on October 10, 14, 17 and 19, 2016 (Docs. xxxx and qq).
29. On October 31, 2016 and November 29, 2016, the principal sent correspondences to the complainant responding to questions about the disciplinary event on September 19, 2016, detailing information about AACPS disciplinary procedures, in-school intervention, the time the student missed from the classroom, provision of instruction, consequences for the student, the role of the administration when using discipline and the offering of additional counseling to the student (Docs. rr and aaa).
30. On November 4, and 16, 2016, the complainant sent correspondence to school staff requesting for the documents that are to be discussed at the IEP team meeting scheduled for November 30, 2016 be provided earlier than five (5) days prior to the meeting, to allow enough time for him to read and analyze the reports. On November 17, 2018 the school psychologist sent correspondence to the complainant with the documents attached. The school psychologist's log of contacts indicated that he provided counseling services to the student on November 18 and 28, 2016 (Docs. ss, ww and xxxx).

November 30, 2016 IEP Team Meeting

31. At the November 30, 2016 IEP team meeting, the IEP team reviewed and revised the FBA and Behavioral Intervention Plan (BIP). The school psychologist reported that the student was able to cope during twenty-two (22) episodes of frustration out of twenty-seven (27) total incidents. It was reported that fourteen (14) of the incidents occurred in math class with an overall decrease in incidents since the start of the 2016-2017 school year. The team discussed determining whether the frustration the student experiences at the beginning of the school day is related to the math content or the transition from home to school (Docs. bbb, eeee, and llll).
32. The audio recording of the November 30, 2016 IEP team meeting reflects that a review of the behavioral data indicates that there are fourteen (14) behavioral incidences occurring in math class where the student was able to use coping strategies including using the safety protocol, the flash pass, seeking teacher assistance, taking a break, and taking deep breaths. The audio recording reflects the complainant's concern that there is a need for more specific data to determine the underlying cause of the student's anxiety inducing incidences of frustration. (Review of the audio recording of the November 30, 2016 IEP team meeting and Doc. vvvv).

December 7, 2016 Behavioral Incident (Bus)

33. On December 7, 2016, the complainant sent correspondence to the school psychologist indicating that the student arrived home crying concerned that the boys on the school bus may have been laughing at him. The complainant described the situation as "the student not being able to handle his emotions and reactions to other people's humor" and asked the school psychologist to meet with the student to process the incident. On December 9, and 16, 2016, the school psychologist met with the student about interpreting behaviors, expected and unexpected behaviors within a social thinking perspective, using "benefit of the doubt" logic, and recognizing the differences between bullying and teasing behaviors and using problem solving in those instances (Docs. ccc and xxxx).
34. On December 9, and 12, 2016, the complainant sent correspondence to the school staff indicating areas of concern with the FBA and BIP and documented recommendations. On December 14, 2016, the school staff sent correspondence to the complainant indicating that his documented concerns will be attached to the prior written notice report from the team meeting dated November 30, 2016 (Docs. ddd, eee, fff, and iii).

December 20, 2016 Student Behavioral Incident

35. On December 20, 2016, the complainant sent correspondence to the school staff requesting details about the student's day because the student indicated that he was feeling "like the world was against him" and that he had a "rough start" to the day. The student's case manager sent correspondence to the complainant that night providing

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information and she stated that she would discuss the situation with the school psychologist the next day. On December 21, 2016, the school psychologist sent correspondence to the complainant indicating that he debriefed with the student about the incident, discussed coping strategies and the upcoming transition. The school psychologist's log of services indicated that on January 4, 13, and 25, 2017, counseling support was provided to the student (Docs. ggg, hhh, and xxxx).

January 10, 2017 and January 19, 2017 Student Behavioral Incidences

36. On January 10, 2017, the complainant sent correspondence to the school staff requesting details about the student's day because the student indicated some frustration at the beginning of the day and the case manager was absent. On January 19, 2017, the student's case manager sent correspondence to the complainant and the student's mother indicating that the student is showing an increase in levels of anxiety and frustration. On January 23, and 26, 2017, the school psychologist documented his meeting with the student to work on flexibility, the effects of the recent transition after winter break and adapting to changes in his routine. The school psychologist sent correspondence to the complainant about his collaboration with the student's private physician and the student's case manager who joined him while meeting with the student about flexible thinking, editing, limit setting and setting unrealistic expectations (Docs. sss, xxx, bbbb, cccc and xxxx).

IEP Quarterly Progress and Report Card Grade Reports

37. On October 31, 2016, IEP progress reports indicate that the student achieved the goal for learning behaviors, is making sufficient progress to meet the three goals in the area of pragmatic language, and is making sufficient progress in writing, math and on his social/emotional goals. For the first marking period, the student's report card indicated that he achieved a 91% in English, 86% in social studies, 95% in science, 93% in math, 89% in world language, 100% in chorus, 80% in AVID⁴, and 100% in fitness and health, providing him with an honor roll distinction (Docs. hhhhh and fffff).
38. On January 20, 2017, IEP progress reports indicate that the student achieved the goal for learning behaviors, is making sufficient progress to meet the goal in the area of pragmatic language when using previously learned statements to express frustration, is achieving the second goal in the area of pragmatic language because he is able to independently state solutions to a problem and justify his response, and is achieving the third goal in the area of pragmatic language by stating inferences when given scenarios, and is making sufficient progress in writing, math and on his social/emotional goals (Doc. hhhhh).

⁴ AVID promotes student success in rigorous college preparatory curriculum (www.bcps.org)

DISCUSSION/CONCLUSIONS:

In order to provide a student with a Free Appropriate Public Education (FAPE), the public agency must ensure that an IEP is developed that addresses all of the needs that arise out of the student's disability that are identified consistent with 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. In the case of a student whose behavior impedes the student's learning or that of others, the IEP team must consider the use of positive behavioral interventions and supports, and other strategies to address the behavior (34 CFR §§300.101 and .324).

The public agency must ensure that the IEP team reviews the IEP periodically, but not less than annually, to determine whether the annual goals are being achieved (34 CFR §300.324). In addition to reviewing the IEP at least annually, the public agency must ensure that the IEP team reviews and revises, as appropriate, the IEP to address any information from the parents and the student's anticipated needs (34 CFR §300.324).

In this case the complainant alleges that AACPS did not meet as an IEP team, to discuss the student's behavioral incidences, implement a safety protocol or create an FBA. In addition, the complainant alleges that the AACPS has not provided data to support the IEP quarterly progress report. The complainant also alleges that the student was not in a co-taught classroom at the start of the 2016-2017 school year.

Allegation #1 Addressing Social, Emotional and Behavioral Needs

Based on the Findings of Facts #8, #14, #18, #25, #33, #35, and #36, the MSDE finds that there is documentation that the student has experienced problems with frustration and anxiety during this 2016-2017 school year. Based on the Findings of Facts #4, #5, #7, #9 - #11, #13, #14, #22, #23, #25-#28, #30 - #32, and #36 - #38, the MSDE finds that the AACPS has ensured that the IEP team has already met to consider supports to address the student's social, emotional and behavioral needs, and that no violation has occurred.

**Allegation #3 Provision of Special Education Instruction by
General and Special Education Teachers**

Based on the Findings of Facts #4 and #5, the MSDE finds that the special education instruction provided between August 22, 2016 and August 26, 2016 was not delivered by both general and special education teachers as required by the IEP. Therefore this office finds that a violation occurred.

Notwithstanding the violation, and Based on the Findings of Facts #6, #7, #26, #27, #37, #38, #42 and #43, the MSDE finds that there was no educational impact and therefore no

student-based corrective actions are required.

Allegation #5 Provision of Weekly Data Tracking Reports

Based on the Findings of Facts #6 and #7, the MSDE finds that there is documentation that the AACPS has provided the two variations of the weekly data sheets to support the communication between home and school. The AACPS has also provided the data to support the student's IEP quarterly progress report, therefore this office does not find a violation with respect to this allegation.

Allegations #2 AND #4

ASSISTIVE TECHNOLOGY SUPPORTS TO ASSIST WITH MAINTAINING ORGANIZATION AND WRITING AND PROVISION OF ACCOMMODATIONS AND SUPPLEMENTARY AIDS AND SUPPORTS

FINDINGS OF FACTS:

IEP Requirements – Assistive Technology Supports

39. The IEP states that the student requires the following:

Access to a computer for extended written assignments and editing, and prevention of frustration, access to a calculator for math fluency and calculation. The student also requires access to visual/graphic organizers,⁵ copies of student/teacher notes, a visual schedule, a flash pass, preferential seating and headphones for attention, organization (Doc. c).

IEP Requirements – Accommodations, Supplementary Aids and Supports

40. The IEP requires the student be provided with the following instructional and testing accommodations:

- Word processor;
- Math calculator;
- Use of visual and graphic organizers;
- Extended time;
- Multiple or frequent breaks; and
- Reduced distractions to the student (Doc. c).

⁵ A graphic organizer is a visual and graphic display that depicts the relationships between facts, terms, and or ideas within a learning task (<http://aim.cast.org>).

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41. The IEP requires the student be provided with the following supplementary aids, program modifications and supports:
- Access to a computer when writing an essay, periodically;
 - Provision of student/teacher notes when the student is unable to complete notes within the given timeframe;
 - Monitoring of independent work, daily;
 - Provision of reminders for re-checking work, daily;
 - Reduction of workload, periodically;
 - Allow the student to finish work at a later time, daily;
 - Break down assignments into smaller units (manageable pieces), daily;
 - Provision of frequent changes in activities or opportunities for movement, daily;
 - Allow for the use of functional fidgets as well as student movement, daily;
 - Provision of advance preparation for schedule changes, periodically;
 - Reinforcement of positive behavior through non-verbal/verbal communication, daily;
 - Provision of an early warning of transitions, daily;
 - Provision of a visual schedule;
 - Provision of a chill pass and nonverbal cue cards, daily;
 - Review of the accommodations with the student to encourage self-advocacy, periodically;
 - Provision of wait time, daily;
 - Provision of strategies to initiate and sustain attention, daily;
 - Provision of opportunities for private conversations with adults to assist in processing frustration, daily;
 - Teach and encourage the student to use a self-monitoring system, daily;
 - Provision of preferential seating, daily;
 - Access to a quiet, alternative work location, daily;
 - Access to headphones to block out sensory distractions, periodically;
 - Consultative services by the speech/language pathologist, periodically; and
 - Consultative services by the school psychologist and/or school counselor, periodically (Doc. c).

October 5, 2016 IEP Team Meeting

42. The audio recording of the October 5, 2016 IEP team meeting reflects that the complainant expressed concerns about the student's dysgraphia⁶ and organization of ideas and the resulting referral by the elementary school IEP team, proposing that an Assistive Technology (AT) observation be conducted in the fall of 2016. The special education teacher reported that the accommodations and supplementary aids and supports on the

⁶ Dysgraphia is a condition that causes trouble with written expression. These and other writing tasks—like putting ideas into language that is organized, stored and then retrieved from memory—may all add to struggles with written expression (www.understood.org).

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student's IEP are appropriate and successful for the student. The complainant restated his concerns, citing the assessment reports documenting the student's dysgraphia and the recommendations by for assistive technology. To address the complainant's concerns, the IEP team agreed to the AT observation. The complainant disagreed with recommending an observation only, stating that he recommends a full AT assessment. Consent was given by the complainant and the student's mother to conduct the AT observation (Doc. vvvv).

November 30, 2016 IEP Team Meeting

43. The audio recording of the November 30, 2016 IEP team meeting reflects that the student is using learned coping skills documented on the daily behavior chart and the weekly communication reports, modified work, extended time, advance preparation for schedule changes, and the safety protocol have resulted in an overall decrease in the student's behavioral incidences since the start of the 2016-2017 school year. The audio recording also reflects the team decided to reconvene at a later date to address the student's assistive technology needs due to time constraints (Doc. vvvv).

IEP Implementation of Accommodations, Supplementary Aids and Supports

44. The correspondence among school staff reflects that the general educators and special educators convened bi-weekly for collaborative planning meetings and discussed implementation of the student's accommodations, supplementary aids and supports on August 24, and 31, 2016, and September 7, 21, and 14, 2016 (Docs. cccc and mmmmm).
45. On October 31, 2016, a report was made of the student's progress towards achievement of the writing goal to select graphic organizers to assist with the writing process in order to guide writing tasks. The report states that the student is making sufficient progress on the goal because he is able to "complete a graphic organizer for his ideas," and that "this helps him to organize his ideas and keep them in order when writing" (Doc. hhhhh).
46. On January 20, 2017, a report was made of the student's progress towards achievement of the writing goal to select graphic organizers to assist with the writing process in order to guide writing tasks. The report states that the student continues to make sufficient progress on the goal because he wrote a literary analysis comparing two myths," and that "he used a graphic organizer to help keep his thoughts in order." He was able to use a rubric to check to ensure that he had all of the information needed (Doc. hhhhh).
47. The speech/language provider's service logs indicate that the student is making progress with respect to her work with the student on pragmatic judgment, social skills, understanding nonverbal cues, responding to requests on clarification, and responding appropriately to disappointments and frustration (Doc. jjjjj).

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48. There is documentation from school staff in which a checklist is used to remind staff of the supplementary, aids and supports for the student. The teachers report that the staff has received school wide training on the effective use of wait time. Pictures document a card in his binder that is in addition to his behavior safety protocol that provides him with a quick over view of how he can monitor himself. The special education teacher reported that the student's visual schedule is also in his binder. Seating charts show that student sits at the front in each class which provides him access to see the board easily and access to ask questions as he needs to. The checklist indicates that the teaching team makes fidgets, such as jelly bean stress balls, and pencil fidgets available along with exercise balls for supportive posture (Docs. oooo, rrrr, uuuu and Interview with school staff).

DISCUSSION/CONCLUSIONS:

The public agency must ensure that students are provided with the special education services required by the IEP (34 CFR §§300.101 and .323). As stated above, 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, .304, .320, and .324).

Allegation #2

IDENTIFYING AND ADDRESSING ASSISTIVE TECHNOLOGY SUPPORTS TO ASSIST WITH MAINTAINING ORGANIZATION AND WRITING

In this case, the complainant alleges that the implementation of the student's accommodations and supplementary aids and supports have the "appearance of uneven implementation" and is contributing greatly to the student's anxiety levels (Docs. vvvv).

Based on the Findings of Facts #42 - #48, the MSDE finds that there is documentation that the student is being consistently provided with the assistive technology supports for organization and written language, as required by the IEP. Therefore, this office does not find that a violation occurred.

Allegation #4

PROVISION OF ACCOMMODATIONS AND SUPPLEMENTARY AIDS AND SUPPORTS

Based on the Findings of Facts #42 - #48, the MSDE finds that there is documentation that the student is being consistently provided with the accommodations, supplementary aids and supports, as required by the IEP. Therefore, this office finds that no violation occurred with respect to the allegation.

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TIMELINES:

Please be advised that the PGCPs 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 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: sf

c: George Arlotto
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