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September 1, 2017

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6110 Executive Boulevard, Suite 220  
Rockville, Maryland 20852

Ms. Bonnie Walston  
Director of Special Education  
Wicomico County Public Schools  
101 Long Avenue  
P.O. Box 1538  
Salisbury, MD 21802-1538

RE: XXXXX  
Reference: # 17-154

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:**

The MSDE received a complaint from Ms. Ashley VanCleaf, Esq. hereafter, “the complainant,” on behalf of the above-referenced student and her parents. In that correspondence, the complainant alleged that the Wicomico County Public Schools (WCPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to the student.

The MSDE investigated the following allegations:

1. The WCPS has not ensured that the student has been provided with a Free Appropriate Public Education (FAPE), since June 2016, in accordance with 34 CFR §300.101, .320 and .324, and COMAR 13A.05.01.01 and .02. and COMAR 13A.05.01.10.
2. The WCPS did not ensure that Home and Hospital Teaching (HHT) services were provided within ten (10) days of receipt of the verification of the student’s need in December 2016, in accordance with COMAR 13A.03.05.03.

3. The WCPS did not ensure that proper procedures were followed when determining the HHT services to be provided, since August 2016, in accordance with 34 CFR §300.101 and COMAR 13A.03.05.01, .03 and .10.
4. The WCPS has not ensured that transportation services have been consistently provided as required by the Individualized Education Program (IEP), since December 2016, in accordance with 34 CFR §§300.101 and .323.
5. The WCPS did not ensure that copies of the reports of the June 2015 Independent Educational Evaluation (IEE) conducted by XXXXXXXXX, and the March 2016 IEE conducted by a specific private physician, have been maintained in the educational record, in accordance with 34 CFR §300.626 and COMAR 13A.08.02.

**BACKGROUND:**

The student is eleven (11) years old and is identified as a student with Autism under the IDEA. She has an IEP that requires the provision of special education and related services, and attends XXXXXXXXXXXXXXXXXXXX.

**ALLEGATIONS #1 - #3**

**OFFER OF A FREE APPROPRIATE PUBLIC  
EDUCATION (FAPE) AND HOME AND HOSPITAL  
TEACHING (HHT) SERVICES**

**FINDINGS OF FACTS:**

1. On June 3, 2016, the IEP team considered the parents' concerns that the student, who was at the time a parentally-placed private school student, was not receiving sufficient services through the service plan that was developed. The documentation of the meeting reflects that the school staff explained to the parents that, as a parentally-placed private school student, she was not entitled to receive all of the services she required. The parents were informed of the right to enroll the student in the public school system in order for her to be provided with all of the services she needed through an IEP. However, the parents indicated that they did not intend to enroll the student in the WCPS.
2. The documentation of the June 3, 2016 IEP team meeting also reflects that after the meeting was adjourned, the parents shared information from the student's previous visit to a doctor. The documentation reflects that the student has excessive sensitivity to sounds, which necessitates the use of earplugs, and that she requires a nap during the day as a result of drowsiness from her medication. The parents also shared a copy of a report of a privately obtained psychoeducational assessment, which identified emotional dysregulation, anxiety, and deficits in social communication, and included information about the student's academic levels of performance. The report also reflects that the student struggles with working memory and has difficulty completing tasks. The parents were informed that this information could not be considered at that time because the

meeting had adjourned, but that the parents could request another IEP team meeting to consider the information.

3. Following the June 3, 2016 IEP team meeting, the student's father sent an electronic mail message (email) to the school system staff again requesting additional services and stating that it was his understanding that a reevaluation would need to be conducted if the student were to be enrolled in the school system. While the school system staff did not address the assertion about the need for a reevaluation, it was reiterated that an IEP could not be implemented for the student unless the parents returned the student to the public school system.
4. On July 26, 2016, the parents enrolled the student in the WCPS. The first day of the 2016-2017 school year for the school system was on August 29, 2016.
5. On August 30, 2016, the 2<sup>nd</sup> day of school, the IEP team convened and considered information that the school system had received verifying the student's need for Home and Hospital Teaching (HHT) services through October 31, 2016 due to stress and anxiety she was experiencing in anticipation of undergoing brain surgery in September 2016. The team decided that the private psychoeducational assessment report and medical information provided by the parents after the June 3, 2016 IEP team meeting would be considered, and additional assessment data obtained, when the student was ready to attend a school-based program. However, the team did not document a basis for this decision. The team developed an IEP based on information about her present levels of performance from her current private school teachers and determined the services to be provided to the student in the home. The team documented that it decided to address only academic needs through HHT services due to the level of anxiety the student was experiencing.
6. On September 6, 2016, HHT services were initiated.
7. The IEP team did not develop a plan to transition the student back to school prior to October 31, 2016, which was the expiration of the period of time for which she was to receive HHT services. On October 31, 2016, the IEP team decided that the transition would consist of the student meeting with the school staff. The team considered the private psychoeducational assessment report. Based on the data, the IEP team made revisions to the IEP, including a goal in the area of social pragmatics, an additional reading goal, speech/language therapy and social skills training. The IEP team decided that it would reconvene to consider conducting additional assessments after the student had time to transition to the school setting.
8. On November 2, 2016, the student began attending school in the mornings.

9. On November 9, 2016, the student's private physician provided verification that the student was unable to attend a school-based program on a full time basis until November 30, 2016 due to both a physical and an emotional condition. The information from the physician states that the student could return to school in the morning, but that she would need to participate in therapy for the rest of the day to ensure that she recovers from brain surgery. The information also contains a recommendation for the student to continue to receive HHT services during this time period.
10. On November 15, 2016, the student began receiving HHT services in the afternoon. The HHT services continued through November 25, 2016.
11. On November 28, 2016, the IEP team considered the information provided by the private physician on November 9, 2016, as well as documentation from a different private physician provided on November 15, 2016, that the student was unable to attend school at all until January 1, 2017 as a result of an emotional condition. On December 1, 2016, the parents were informed that the documentation from the second private physician was found to be insufficient by the school system. However, on December 6, 2016, the school system was provided with the additional documentation needed for verification of the need for HHT services from the second private physician, which states that the HHT services should begin on December 8, 2016.
12. No written procedures for resolving disputes regarding HHT services were submitted by the WCPS in response to a request by the MSDE.
13. The student was provided with HHT services from December 8, 2016 until December 15, 2016.
14. On December 15, 2016, the IEP team reviewed the medical information provided by the parents, and again reviewed the private psychoeducational report that was first reviewed at the October 2016 meeting. The IEP team recommended an updated psychological assessment, as well as educational, occupational, and physical therapy assessments. The team discussed data from the private physicians, the HHT services provider, and the parents, and revised the IEP to address the areas of need identified.
15. On December 16, 2016, the student returned to school on a full time basis.
16. On March 22, 2017, the IEP team considered the results of the assessments recommended on December 15, 2016.
17. On April 19, 2017, the IEP team revised the IEP based on its review of the assessment data.<sup>1</sup> Based on the data that indicated that the student was performing at or above grade

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<sup>1</sup> The reevaluation was not completed within the required 90 days due to the unavailability for the student and the parties' agreement to extend the timeline to ensure that all necessary data was obtained.

level, they discontinued the academic goals. The team added an additional goal in the area of pragmatic social skills. Although the student was already being provided with supplementary aids and services to assist with anxiety about completing assignments correctly, the team decided to add a goal in this area to be addressed by special education instruction as well. The team also decided to reduce the amount of special education and related services to be provided to assist the student in achieving the goals based on the discontinuation of the academic goals.

## **DISCUSSION/CONCLUSIONS:**

### **Allegation #1: Offer of a Free Appropriate Public Education (FAPE)**

All students with disabilities residing in the State, including those who are homeless, wards of the State, and attending private schools, and who are in need of special education and related services must be identified, located, and evaluated, and offered a FAPE. In order to provide a student with a FAPE, the public agency must ensure that an IEP is developed that addresses all of the needs that arise out of the student's disability that are identified in the evaluation data (34 CFR §§300.101, .111, .113, .320, and .324).

When a student with a disability under the IDEA is parentally placed in a private school, **the public agency where the student resides must make a FAPE available to the student unless the parent makes clear his or her intent to keep the student enrolled in the private school. If there is no indication of the intent to enroll a parentally-placed private school student in the public school**, the public agency must consider whether the student meets the criteria for equitable participation in services funded by the IDEA. The public agency determines, after consultation with representatives of private schools, the services to be offered to parentally-placed private school students. If a parentally-placed private school student requires the services that are identified, a service plan is developed for the student [Emphasis added] (34 CFR §§300.145 - .148 and *Questions and Answers on Serving Children with Disabilities Placed by Their Parents at Private Schools*, OSEP, April 2011).

If there is an indication that the parents are considering enrolling in the public school system, an IEP must be offered. There is no requirement for parentally-placed private school students to enroll in the school system and be receiving educational services in order to be entitled to an offer of a FAPE (*Forest Grove School District v. T.A.*, 129 S. Ct. 2484 (2009)).

At the beginning of each school year, each public agency must have an IEP in effect for each student with a disability (34 CFR §300.323). 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 §300.324). If the parent shares an Independent Educational Evaluation obtained at private expense, it must be considered by the public agency 34 CFR §300.502).

In order to ensure parent participation in IEP team meetings, the public agency must provide parents with the opportunity to attend and participate in IEP team meetings, including notifying the parent of the meeting early enough to ensure that the parent will have an opportunity to attend and scheduling the meeting at a mutually convenient time and place. The public agency must also provide parents with written notice at least ten (10) days in advance of the meeting unless an expedited meeting is needed to ensure the provision of a FAPE (34 CFR §300.322 and COMAR 13A.05.01.07).

In this case, the complainant alleges that, prior to the student's enrollment in the WCPS, the parents expressed concerns that the student required more services than was provided in the service plan and that they wished to reenroll the student in the public school system. She further alleges that the student was not reenrolled in the WCPS during the summer of 2016 because the family was told that it was too late for an IEP to be developed and for the student to be considered for Extended School Year (ESY) services. She states that the school system staff indicated that an IDEA evaluation would have to be completed before the IEP was developed, which could take up to 90 days and go beyond the time period for ESY services.

In this case, the school system asserts that it was not required to begin developing an IEP until the student was enrolled in the school system and "physically attending school."

Based on the Findings of Facts #1 - #4, the MSDE finds that, while there was no requirement for the student to be enrolled in the school system prior to the offer of a FAPE through the development of an IEP, the documentation does not support the allegation that the parents evidenced an intent to enroll the student in the WCPS prior to doing so on July 26, 2016. Therefore, this office does not find that a violation occurred with respect to this aspect of Allegation #1.

However, based on the Findings of Facts #4 and #5, the MSDE finds that the WCPS did not take steps to ensure that an IEP was developed on an expedited basis to make sure that it was in place at the start of the 2016-2017 school year following the student's enrollment in the school system on July 26, 2016.

In addition, based on the Findings of Facts #5 and #14, the MSDE finds that there is no documentation of the basis for the team's decision to delay review of the privately obtained data. Therefore, this office finds that violations occurred with respect to Allegation #1.

Notwithstanding the violations, based on the Findings of Facts #5 and #6, the MSDE finds that the violations did not have a negative impact on the student because the student was unable to attend school at the start of the school year and HHT services began within ten (10) school calendar days of the start of the school year, in accordance with COMAR 13A.03.05.03; the team had data regarding the student's academic levels of performance from another source when developing the IEP to be implemented through HHT services; and the team decided to address

only the academic areas of need through HHT services based on data regarding the student's availability to access services. Therefore, no student-based corrective action is required.

### **Allegations #2 and #3: HHT Services**

Upon receipt of verification that a student is unable to attend school due to a physical or emotional condition, 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 develop a plan for returning the student to a school-based program. When the period of convalescence ends, the IEP team must review and revise the IEP and determine the appropriate educational placement** [Emphasis added] (COMAR 13A.03.05 and 13A.05.01.10).

When determining the HHT services to be provided, the IEP team must consider the availability of the student to receive the special education and related services needed to enable the student to progress in the general curriculum and advance toward achieving the IEP goals (MSDE Technical Assistance Bulletin #22, *Home and Hospital Teaching and Students with Disabilities*, August 20, 2010).

Each local school system is required to develop a review process to resolve any disagreement that arises in the implementation of the HHT services regulations and must certify to the State Superintendent of Schools that written procedures are in place in order to implement the regulations (COMAR 13A.03.05.03 and .05).

When a student requires HHT services, the instructional services must begin as soon as possible, but not later than ten (10) school calendar days following the notification to the public agency of the inability of the student to attend the school of enrollment and receipt of the verification of the need for services (COMAR 13A.03.05.03).

In this case, the complainant alleges that the WCPS did not take steps to ensure that its concerns about the sufficiency of verification of the student's need for HHT services that was submitted in November 2016 were resolved in a timely manner. As a result, she asserts that there was a delay in the provision of HHT services and that the parents had to pay for the services of a private provider during that timeframe.

Based on the Finding of Fact #12, the MSDE finds that there is no documentation that the WCPS has established the required procedures for resolving HHT disputes. Therefore, this office finds that a violation occurred with respect to Allegation #2.

However, based on the Findings of Facts #7 - #11 and #13, the MSDE finds that the student was provided with HHT services within ten (10) days of the receipt of proper verification of the need for HHT services. Therefore, this office finds no impact on the student.

In this case, the complainant also alleges the proper procedures were not followed with respect to determining the HHT services to be provided because the IEP team did not consider the report of a private psychoeducational assessment that was provided by the parents.

As stated above, this office finds that a violation occurred with respect to the delay in considering the private psychoeducational evaluation, but does not find that there was an impact on the student. Therefore, no student-specific corrective action is required.

Based on the Findings of Facts #5 and #7, the MSDE also finds that the WCPS did not ensure that a plan was developed by the IEP team to transition the student back to a school-based program prior to the end of the period of treatment or convalescence. Therefore, this office finds that a violation occurred with respect to Allegation #3.

Notwithstanding the violation, based on the Findings of Facts #7, #8, and #15 - #17, the MSDE finds that the student was successfully transitioned back to a school-based program consistent with the recommendations of her private physician prior to the end of the period of convalescence. Therefore, this office finds that, while the IEP team did not develop the transition plan, as required, the violation did not negatively impact the student and no student-specific corrective action is required.

#### **ALLEGATION #4                      IEP IMPLEMENTATION**

#### **FINDING OF FACT:**

18.     The IEP does not require that the student be transported to school prior to the start of the school day in order to have additional time to prepare for the school day.

#### **DISCUSSION/CONCLUSION:**

The public agency must ensure that the student is provided with the special education and related services required by the IEP (34 CFR §§300.101 and .323).

In this case, the complainant alleges that the WCPS did not ensure that the student was provided with appropriate transportation services because her bus did not arrive to school within sufficient time to enable her to unpack and “engage in morning routines” prior to the start of the school day.

Based on the Finding of Fact #18, the MSDE finds that the IEP does not require that the student be transported to school prior to the start of the school day. Therefore, this office does not find that a violation occurred with respect to the allegation.



**ALLEGATION #5                      MAINTENANCE OF THE EDUCATIONAL RECORD**

**FINDINGS OF FACTS:**

19.     There is documentation that a June 2015 report from XXXXXXXXXXXX, which had been provided by the student's parents, has been maintained by the school system staff.
  
20.     There is no documentation that a March 2016 report from a specific private physician exists and was provided by the parents to the school staff. However, there is documentation that documents generated in May 2016, June 2016, and August, 2016 by the specific private physician, which had been provided by the student's parents, have been maintained by the school staff.

**DISCUSSION/CONCLUSION:**

Student records provide information about a student's academic and functional performance. Therefore, the proper maintenance of these records is necessary to ensure that accurate information is available to plan for a student's education. The IDEA requires that all student educational records be maintained in accordance with the Family Educational Rights and Privacy Act (FERPA) (34 CFR §§300.610 - .627).

In order to ensure proper student records management, the local public agencies in Maryland are required to maintain educational records consistent with the Maryland Student Records System Manual (COMAR 13A.08.02.01 and .02). The Maryland Student Records System Manual requires that records, including assessment data, be maintained in the educational record (*Maryland Student Records System Manual*, 2016).

In this case, the complainant asserts that copies of documents that the parent provided to the school staff, including a June 2015 IEE conducted by XXXXXXXXXXXX and a March 2016 report from Dr. XXXXX, were not provided to her in response to her request. Therefore, the complainant alleges that the school system has not ensured that these documents have been maintained in the educational record.

Based on the Findings of Facts #19 and #20, the MSDE finds that the documentation does not support the allegation. Therefore, no violation is identified with respect to the allegation.

**CORRECTIVE ACTIONS/TIMELINE:**

The MSDE requires the WCPS to provide documentation of the following by November 1, 2017:

1.     Ensure that steps have been taken to offer a FAPE to students with disabilities when an IEP is required without regard to whether the student is enrolled in the school system.

2. Ensure that steps have been taken so that an IEP is developed on an expedited basis for any student identified as a student with a disability under the IDEA during the summer months so that the IEP will be in effect at the start of the school year.
3. Ensure that steps have been taken so that the results of private evaluations are considered in a timely manner.
4. Ensure that steps have been taken so that a plan to return each student with a disability under the IDEA who receives HHT services to a school-based program is developed by an IEP team and implemented prior to the end of the period of treatment or convalescence.
5. Ensure that steps have been taken so that procedures have been developed for resolving disputes about HHT services and that steps have been taken to ensure that those procedures are made available to parents.

**TECHNICAL ASSISTANCE:**

Technical assistance is available to the parties through Dr. Nancy Birenbaum, MSDE. Dr. Birenbaum may be contacted at (410) 767-7770.

Please be advised that the complainant and the WCPS 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 available during the complaint investigation and there must be a substantial reason why they were not submitted during the investigation.

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 WCPS must implement any corrective actions consistent with the timeline requirements as reported in this Letter of Findings.

Questions regarding the findings and conclusions contained in this letter should be addressed to this office in writing. The parents and the WCPS 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

Ms. Ashley VanCleaf, Esq.  
Ms. Bonnie Walston  
September 1, 2017  
Page 11

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:       XXXXXXXXX  
          XXXXXXX  
          Donna Hanlin  
          Lynne Smoak  
          XXXXXXXXX  
          Dori Wilson  
          Anita Mandis  
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          Nancy Birenbaum