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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: #18-032

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.

ALLEGATION:

On November 7, 2017, the MSDE received a complaint from Margaret Joya Jones, Esq., hereafter, “the complainant,” on behalf of the above-referenced student and her mother, Ms. XXXXXXXX. In that correspondence, the complainant alleged that the Anne Arundel County Public Schools (AACPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to the student.

The MSDE investigated the allegation that the AACPS did not ensure that the student was provided with a Free Appropriate Public Education (FAPE), during the 2016 - 2017 school year, as a result of the following violations, in accordance with 34 CFR §§300.101, and .320, .324, and COMAR 13A.03.05 and 13A.05.01:

- a. The AACPS did not ensure that the Individualized Education Program (IEP) team addressed the student’s lack of expected progress towards achievement of the annual IEP goals;

- b. The AACPS did not ensure that the IEP team developed an IEP that addresses the student's social, emotional, and behavioral needs and considered positive behavioral interventions to address the student's behavior;
- c. The AACPS did not ensure that the IEP team's decisions regarding the student's need for Extended School Year (ESY) services were consistent with the data; and
- d. The AACPS did not ensure that the student was provided with Home and Hospital Teaching (HHT) services as required during the 2016 - 2017 school year.

BACKGROUND:

The student is fifteen (15) years old and is identified as a student with an Emotional Disability under the IDEA. She has an IEP that requires the provision of special education and related services. At the start of the investigation period, the student was attending XXXXXXXXXXXXXXXX (XXX XXXXX HS). Following the family's relocation after the end of the 2016 - 2017 school year, the student enrolled at XXXXXXXXXXXXXXXX where she has attended school since the start of the 2017 - 2018 school year.

FINDINGS OF FACTS:

- 1. The IEP in effect at the start of the 2016 - 2017 school year was developed in May 2016, at the end of the student's 8th grade just prior to her transition to high school at XXXX XXXX HS. The May 2016 IEP identifies that the student's primary disability is a Specific Learning Disability that affects her in the areas of written expression, learning behaviors, reading and math.
- 2. The May 2016 IEP documents that the student comes prepared to class, participates "actively in her education," makes friends easily, enjoys interacting with and helping peers, and has the ability to "self-reflect" in conversations with the school staff away from peers. However, the IEP also states that the student's behavior "tends to go through periods of great productivity and engagement, followed by periods of increased off-task behavior and lack of concern for academic work," as reflected in the "roller coaster" variation in her grades. Her off-task behaviors include frequently leaving her seat and having conversations with peers, which requires 2 to 3 prompts per class period for her to return to a task.
- 3. The May 2016 IEP also documents the student's own report that she "does not enjoy bringing attention to herself in front of peers," and that she "feels [that] she does not need the accommodations and does not wish to receive them." The IEP indicates that it is "essential" for the student to request help and communicate with the school staff for assistance with classwork. It also reflects that she does not turn in work or complete work, and does not attempt work in several of her classes.

4. The May 2016 IEP indicates that the student is functioning at approximately the 4th grade level in math. It does not identify her instructional grade level in reading and written expression.
5. The May 2016 IEP includes three (3) academic goals. It also includes one (1) goal in the area of learning behaviors requiring the student to improve her school performance by remaining on task, resisting off-topic conversations, turning in completed classwork and homework, and by asking for help or clarification when needed to complete tasks.
6. The May 2016 IEP requires ten (10) hours per week of specialized instruction in the general education classroom, provided primarily by a special education teacher, to support the student in core academic courses. Accommodations, including extended time and reduced distractions, and supplementary supports, including checks for understanding, repetition of directions, and monitoring of independent work, are also required by the IEP.
7. Beginning in the 1st (first) week of the 2016 - 2017 school year, and continuing into September 2016, the attendance record documents that the student frequently skipped classes or arrived late to classes.
8. From September 28, 2016 until October 7, 2016, the student was absent due to a period of hospitalization based on concerns including “psychiatric and behavioral issues” and the need for medication management.
9. On October 11, 2016, the student returned to school. The school staff documented that the student was “anxious to be back in school and wants to do well in her classes.” They also acknowledged the doctor’s request that the student ease back into classes, and his recommendation that any makeup work be limited or excused.
10. On the same date of her return to school, the student completed a bullying reporting form stating that on September 16, 20, and 22, 2016, she was teased, threatened and called names by other students.
11. The AACPS has written procedures that are to be followed in response to the receipt of a written bullying reporting form. The procedures require an investigation that must be “promptly and appropriately” conducted within two (2) days after receipt of the report. The procedures also require the school system staff to document the findings of the investigation in writing, using a specific form. There is no documentation that the school system staff conducted the required investigation in response to receiving the bullying form from the student.
12. On October 24, 2016, the IEP team convened at the request of the parent. The Prior Written Notice (PWN) of the decisions made at the meeting documents that the student’s parent expressed concern that “nothing was being done” about the impact of the bullying on the student. The documentation does not describe the impact and does

not reflect that the IEP team addressed the parent's concern. However, following the meeting, the school staff conducted observations of the student in two (2) classes where the student indicated she had experienced bullying. The school staff reported observing no incidents of bullying, but the student reported that another student made a negative remark to her that was not heard by the observer.

13. The student performed poorly during the 1st marking period of the 2016 - 2017 school year, as demonstrated by receiving failing grades in three (3) courses. Her report card documents her unexcused absence from class approximately 26 times, and unexcused late arrival to class approximately 15 times, during this school quarter. However, the IEP team did not consider addressing the student's lack of class attendance.
14. The progress reports prepared by the school staff in November 2016 and again in January 2017 document that the student was not making sufficient progress towards mastery of the annual IEP goals in reading, learning behaviors, and math. These progress reports include references to the student's poor attendance and interfering behaviors. More specifically, they state that she rarely comes to class, does not remain on task, does not turn in completed classwork and homework assignments, and "chooses" not to make up assignments. However, there is no documentation that the IEP team convened to consider the student's lack of expected progress following either of the progress reporting of lack of progress.
15. The student's performance continued to decrease during the 2nd marking period of the 2016 - 2017 school year, as reflected by her failing grades, now in five (5) courses. Her report card documents her unexcused absence from classes approximately 18 times, and unexcused late arrival to class approximately 20 times, during this school quarter. Again, the IEP team failed to consider addressing the student's lack of class attendance.
16. On January 18, 2017, the student was hospitalized for a second time during the 2016 - 2017 school year due to concerns including danger to self and others, "escalating aggression and increase in disruptive behaviors," depression, and the need for medication management. While hospitalized, the student reported that she was "failing in school due to skipping most classes." It also documents the student's report that, while she has an IEP, the school "no longer provide[s] me with my accommodations since I have started high school. When I ask the administrators about why I am no longer getting help, they just make excuses. They tell me that I can stay after school during the week to get extra help, but I can't stay late because I need to help at home." It further notes that the student's school attendance is inconsistent, she "frequently" is involved in fights at school, and that she has poor grades due to skipping school.
17. The student did not return to school following her discharge from the hospital on January 27, 2017.

18. On January 31, 2017, the school staff documented that the student was not making sufficient progress towards mastery of the annual IEP goals in reading and learning behaviors. Like the November 2016 reports, these progress reports document concerns about the student's attendance, noting that she "rarely comes to class" and "often" skips class. They also document continued concerns about the student's behavior, noting that she does not remain on task and does not turn in classwork or homework.
19. On February 2, 2017, the student's private therapist sent correspondence to the school staff documenting that she was "not stable and undergoing a severe emotional crisis." The private therapist noted that the student has been diagnosed with "a severe episode of recurrent major depressive disorder without psychotic features, anxiety disorder unspecified, and Attention Deficit Hyperactivity Disorder (ADHD) inattentive type." The private therapist did not conclude that the student was unable to attend school due to an emotional crisis, although she did recommend a change in the student's placement.
20. On February 6, 2017, the IEP team convened. The IEP team determined that additional information was needed about the student's present levels of academic performance, as well as her levels of social, emotional and behavioral functioning. The student's parent provided consent for recommended assessments.
21. On the same date, the school psychologist determined that the student was in an emotional crisis, but did not verify that she could not attend school. However, the IEP team discussed HHT services and determined that the student would be provided with six (6) hours per week.
22. On February 10, 2017, an HHT instructor was assigned to provide HHT services to the student.
23. On February 17, 2017, the HHT instructor sent an email to the parent stating that she had been unsuccessful in her attempts to contact the parent to discuss scheduling for HHT services to the student. From February 20 to 25, 2017, the parent and the HHT instructor exchanged several emails that reflect difficulty in determining a mutually agreeable place and time for the student to receive HHT services.
24. On March 13, 2017, a second (2nd) HHT instructor was assigned. There is no documentation of any attempts by this HHT instructor to contact the parent to schedule HHT services.
25. On March 27, 2017, a third (3rd) HHT instructor was assigned. On the same date, approximately seven (7) weeks after the date that HHT services were authorized without proper verification, HHT services were initiated.

26. On March 31, 2017, the IEP team convened. The student's parent was unable to attend the meeting but gave permission for the meeting to proceed without her participation. The IEP team reviewed the results of assessments that were recommended at the February 2017 IEP team meeting. The report of a psychological assessment reflects that the student demonstrated significant irritability with others and a tendency to respond with anger, aggression, and verbal and physical acting out. It also notes that she feels depressed, has poor coping strategies and difficulty with interpersonal relationships, and that she "has been struggling with these feelings for an extended period of time, and to a marked degree, as noted by her teachers and parent." The evaluator concluded that the student's behaviors are characteristic of students with the educational disability of Emotional Disability,
27. The IEP team also considered the report of the educational assessment which documents the student's functioning in the "low" range for her chronological age in the areas of broad reading and writing, and in the "very low" range in math.
28. Based on the data, the IEP team determined that the student's primary disability is an Emotional Disability. The team agreed to reconvene within 30 days to revise the IEP based on the new data.
29. On April 24, 2017, the school system notified the student's parent that HHT services would end on May 5, 2017 due to the lack of a reverification of the need for HHT services.
30. On April 26, 2017, the IEP team convened to conduct the annual review of the student's educational program. The IEP team discussed the student's academic, behavioral and emotional struggle "since entering high school," noting the two (2) periods when she was hospitalized due to depression, being a danger to herself and others, and impulsive behaviors. They also discussed that she rarely attends class, frequently does not return to class after lunch, and makes extended trips to the bathroom. The IEP team documented that the student may be able to demonstrate success in both academics and behavior, "with significant supports, interventions, and encouragement."
31. The IEP team revised the IEP to reflect updated information about the student's present levels of performance in math and learning behaviors, and included information about the student's social and emotional functioning. However, the IEP developed by the team does not identify the student's instructional level of performance in reading and written expression. The IEP team also determined that the student requires additional supplementary supports, including reinforcement of positive behaviors and teaching replacement behaviors for socially inappropriate behavior, as well as preferential seating.
32. The IEP team continued the annual IEP goals in reading and math, although with revised objectives, and revised the goal in learning behaviors to include an objective to assist the student with demonstrating regular class attendance. In addition, the written expression goal was revised, and a new goal was added to address the student's needs in the newly identified area of social and emotional skills functioning. The IEP team

also determined that the student requires counseling as a related service, to be provided twice a month by a school psychologist or social worker. The IEP continues to state that the student requires ten (10) hours per week of specialized instruction. However, it also states that the specialized instruction will be provided for two (2) hours per week in each of the student's language arts, math, science and social studies classes, but does not indicate the manner in which the remaining two (2) hours of specialized instruction are to be provided.

33. The Prior Written Notice of the decisions made at the April 2017 IEP meeting documents that the IEP team discussed Extended School Year (ESY) services. The IEP reflects that the team determined that there are no annual goals related to critical life skills and no likely chance of substantial regression, while also documenting that the student "was not demonstrating a degree of progress towards mastery of IEP goals related to critical life skills." It also reflects that the IEP team determined that there are no significant interfering behaviors or other special circumstances to be considered, without explanation, and that the nature and severity of the student's disability did not reflect a need for ESY services. The IEP team documented that the student does not require ESY services because she "has demonstrated that she is able to retain concepts over long breaks," and because there are no "critical emerging skills" at the time.
34. On May 4, 2017, the school psychologist decided that the student was still in an emotional crisis and recommended the continuation of HHT services through the remainder of the school year. However, she did not verify that the student was unable to attend school as a result of the emotional crisis. Instead, she stated that "As we are nearing the close of the school year, and regular schedules have had to be adjusted to accommodate the plethora of standardized testing that is being administered during the month of May, it does not appear to be therapeutically beneficial to bring her back into the school setting at this time."
35. On May 5, 2017, the school system staff approved the continuation of HHT services to the student through the end of the 2016 - 2017 school year. There is no documentation that the IEP team convened to determine appropriate interventions and supports required to return the student to the school setting.
36. While there is documentation that HHT services were provided to the student between March and June 2017, the documentation reflects that she was not provided with the total amount of HHT instruction required during the period of time that she was authorized to receive HHT services.
37. There is no documentation that reports of the student's progress towards mastery of the annual IEP goals were developed for the 3rd or 4th quarters of the 2016 - 2017 school year.

DISCUSSION/CONCLUSIONS:

Lack of Progress and Addressing Needs

Based on the Findings of Facts #1 - #20, #26 - #28, #30 - #32, and #37, the MSDE finds that the AACPS did not ensure that the IEP team considered positive behavioral interventions to address the student's interfering behaviors during the 2016-2017 school year until April 2017, in accordance with 34 CFR §300.324. Based on the Findings of Facts #4, #5, #31 and #32, the MSDE also finds that there is no documentation that the IEP goals in reading and written expression are reasonably calculated to enable the student to make progress in those areas because there is no evidence that they are based on the team's consideration of the student's previous rate of academic growth and whether she is on track to achieve grade level proficiency. Therefore, this office finds that a violation occurred with respect to these aspects of the allegation.

ESY Services

Based on the Findings of Facts #7 - #11, #13 - #19, #21 - #25, and #33 - #36, the MSDE finds that the decisions made by the IEP team when considering factors required in determining the need for ESY services were not consistent with the data, in accordance with 34 CFR §§300.106, .324 and .503, and COMAR 13A.05.01. Therefore, this office finds that a violation occurred with respect to this aspect of the allegation.

HHT Services

Based on the Findings of Facts #17, #19, #21, #29, #34 and #35, the MSDE finds that the AACPS did not have verification that the student was unable to attend school as a result of an emotional crisis when authorizing the provision of HHT services in February and May 2017, in accordance with COMAR 13A.03.05.03. Based on the Findings of Facts #21 - #25, and #36, the MSDE also finds that the HHT services were not provided within ten (10) school calendar days of the date that HHT services were authorized, in accordance with COMAR 13A.03.05.03. Therefore, this office finds that a violation occurred with respect to this aspect of the allegation.

Based on the above violations, the MSDE finds that the student was denied a FAPE for the 2016-2017 school year.

ADDITIONAL VIOLATION IDENTIFIED

Based on the Finding of Fact #32, the MSDE finds that the IEP is not written clearly with respect to the manner in which the specialized instruction is to be delivered to the student, in accordance with 34 CFR §§300.320 and .324. Therefore, this office finds that an additional violation occurred.

CORRECTIVE ACTIONS/TIMELINE:

Student-Specific

The MSDE requires the AACPS to provide documentation by February 1, 2018, that the student has been offered compensatory services or other agreed upon remedy for the loss of a FAPE during the 2016-2017 school year.

The MSDE also requires the AACPS to provide documentation by February 1, 2018, that it has reviewed and revised the IEP, as appropriate, to clearly describe the manner in which all of the specialized instruction will be provided to the student, and has identified the student's instructional grade level of performance in reading and math, and developed goals in reading and math that are based on the present levels of performance.

School-Based

The MSDE requires the AACPS to provide documentation by February 1, 2018, of the steps that have been taken to ensure that the XXXXXXXXXX staff comply with the requirements related to each of the violations identified in this Letter of Findings. The documentation must include a description of how the school system will evaluate the effectiveness of the steps taken and monitor to ensure that the violations do not recur.

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 be accompanied with a substantial reason why it was not provided 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.

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Questions regarding the findings and conclusions contained in this letter should be addressed to this office in writing. The parent and the AACPS maintain the right to request mediation or to file a due process complaint, if they disagree with the identification, evaluation, placement, or provision of a FAPE for the student, including issues subject to this State complaint investigation, consistent with the IDEA. The MSDE recommends that this Letter of Findings be included with any request for mediation or a due process complaint.

Sincerely,

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

MEF/ksa

c: XXXXXX
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