




**Karen B. Salmon, Ph.D.**  
State Superintendent of Schools

December 17, 2020




Ms. Trinell Bowman  
Associate Superintendent - Special Education  
Prince George's County Public Schools  
John Carroll Elementary School  
1400 Nalley Terrace  
Landover, Maryland 20785

RE:   
Reference: #21-030

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 October 26 and 27, 2020, the MSDE received correspondence from Mr.  hereafter, “the complainant,” on behalf of his son, the above-referenced student. In that correspondence, the complainant alleged that the Prince George’s County Public Schools (PGCPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to the student.

The MSDE investigated the following allegations:

1. The PGCPS has not followed proper procedures to offer a Free Appropriate Public Education (FAPE) to the student since March 30, 2020, in accordance with 34 CFR §§300 .101, .323, .324, *Supplementary Fact Sheet Addressing the Risk of COVID-19 in Preschool, Elementary and Secondary Schools While Serving Children with Disabilities*, United States Department of Education, dated March 21, 2020, and the MSDE Technical Assistance Bulletin, *Serving Children with Disabilities Under IDEA During School Closures Due to the COVID-19 Pandemic*, dated March 30, 2020. This includes:

- a. The PGCPS has not ensured that the Individualized Education Program (IEP) has been reviewed and revised, as appropriate, no less than annually; and
  - b. The PGCPS has not ensured that the annual IEP goals are being addressed and that the student is being provided with transition activities required by the IEP.
2. The PGCPS has not ensured that the student's needs arising out of a seizure disorder have been addressed since October 8, 2020, in accordance with 34 CFR §§300.320, .321, and .324. This includes:
    - a. The IEP team did not have participation by school system staff who were knowledgeable about school health services and transportation services needed to address the student's needs arising out of a seizure disorder;
    - b. The IEP team did not consider the parents' concerns for the student's education as a result of his seizure disorder; and
    - c. The IEP was not revised to include a statement of the student's needs related to his seizure disorder and the services required to address those needs.
  3. The PGCPS has not ensured that a seizure action plan has been implemented consistent with the IEP team's decision since October 2020, in accordance with 34 CFR §§ 300.101 and .323.
  4. The PGCPS did not provide Prior Written Notice (PWN) of the decisions made on October 1 and 8, 2020, in accordance with 34 CFR §300.503.

**BACKGROUND:**

The student is fifteen (15) years old, is identified as a student with Autism under the IDEA, and has an IEP that requires the provision of special education and related services.

The student is placed by the PGCPS at [REDACTED] a nonpublic, separate, special education school, which he attended from July 1, 2019 until the Statewide closure of school buildings and initiation of virtual learning as a result of the COVID-19 pandemic.

**ALLEGATION #1 OFFER OF A FAPE SINCE MARCH 2020**

**FINDINGS OF FACTS:**

**IEP Development**

1. There is a parent contact log that reflects that, on February 26, 2020, the school staff sent the complainant documents in preparation for an IEP team meeting to conduct the annual IEP review that was scheduled for April 2, 2020 at [REDACTED]. The previous

annual IEP review was conducted on April 11, 2019 while the student was attending the [REDACTED]

2. On March 16, 2020, there was a Statewide closure of school buildings due to the COVID-19 pandemic.
3. On March 30, 2020, the MSDE issued a Technical Assistance Bulletin consistent with Fact Sheets issued by the United States Department of Education on March 16 and 21, 2020 stating that the IDEA and related State requirements were not waived during the COVID-19 pandemic. The MSDE Technical Assistance Bulletin indicated that a student's IEP could be amended to reflect an agreement between a parent and the school system with respect to how the IEP is implemented during the COVID-19 pandemic. The Technical Assistance Bulletin also indicated that an IEP team meeting would need to occur to determine how services will be provided when agreement cannot be reached with a parent, and that IEP team meetings could be conducted virtually with parent agreement.
4. There is no documentation that an IEP team meeting was conducted as planned on April 2, 2020.
5. An Individualized Continuity of Learning Plan (ICLP), dated April 21, 2020, documents that virtual learning had already begun by that date, and states that virtual speech/language therapy sessions were going well. With respect to virtual instruction, the ICLP states that the student "is not always available to attend the live sessions, but has been able to complete the Google Classroom assignments," and that he "has been encouraged to complete the assignments by allowing him to answer questions on the phone versus the computer."
6. A letter from the complainant to the school staff, dated April 22, 2020, documents that, on that date, the complainant requested that the ICLP be revised to clarify that the student had been available for virtual learning, but that the school staff had experienced technical difficulty with the virtual instruction. The complainant stated that the student needs "one-to-one adult support to participate in Distance Learning throughout the sessions, both online and offline," and that while he and the student's mother "try to assist him, we are unable to guarantee our availability to provide him with the support for Distance Learning, as we are busy with other things." The complainant further stated:

There were large numbers of emails from the school staff regarding Distance Learning and we were not able to process all of them as we do not have resources to process all of them. Lecture style live sessions in Distance Learning is not working for [the student], while one-to-one speech therapy sessions have worked well. One to one sessions with histeacher need to be included in the plan.

1. The ICLP also documents that the complainant expressed concern that the IEP goals addressed through virtual learning were from the April 11, 2019 IEP, and that virtual learning should occur based on an IEP developed as a result of an annual IEP review, which was due to take place. There is no documentation that the complainant's concerns were addressed or that the school system offered to convene a virtual IEP team to resolve the matter.
2. A review of the audio recording of a June 9, 2020 IEP team meeting reflects that, on that date, the IEP team conducted the annual IEP review. The IEP team revised the annual IEP goals based on reports of the student's progress. At the meeting, the complainant expressed concern about how the transition services that required community-based activities could be addressed virtually. In response to the complainant's concern, the transition services were revised on June 9, 2020 to include those that could be conducted virtually, including the following:
  - a. Meet with the transition coordinator via Google classroom once per week to complete career research;
  - b. Meet with the transition coordinator once per week to complete two interest inventories per quarter;
  - c. Use *virtualjobshadow.com* to complete job shadowing experiences once per week;
  - d. Meet with the transition coordinator to practice putting information into electronic forms once every month;
  - e. Identify ten new common community signs per quarter; and
  - f. Use a set of picture directions to use a washing machine five times per quarter.
3. A review of the audio recording of the June 9, 2020 IEP team meeting reflects that at the meeting, the complainant and the school-based members of the team disagreed about the behaviors exhibited by the student in the school setting prior to the initiation of virtual instruction. The complainant expressed concern about the manner in which data was being collected to identify interfering behavior. He reported observing increased aggression and physical disruption in the home and indicated that he anticipated that this will continue once the student returns to a school-based program. The team decided that once the student returns to a school setting, additional data would be obtained through an updated Functional Behavioral Assessment (FBA) and that daily data would be collected by the school staff in a manner that was responsive to the complainant's concerns about prior data collection.
4. A review of an invitation to an October 1, 2020 IEP team meeting reflects that an IEP team meeting was scheduled to be held on that date for the purpose of completing corrective action required as a result of an MSDE investigation of the complainant's State complaint #20-137. The Letter of Findings issued by the MSDE in State complaint #20-137 states that the MSDE required the PGCPs to ensure that the IEP team determines whether lack of implementation of the Behavioral Intervention Plan (BIP) had a negative impact on the student's ability to benefit from his education program.

5. A review of the audio recording of an October 1, 2020 IEP team meeting reflects that at that meeting, the school-based members of the team reported that the purpose of the BIP was to address aggressive behavior and that the data collected in the school setting did not indicate that a BIP has been required to address such behavior. The complainant disagreed and reported that the student is displaying aggressive behavior at home. Based on the information from the school-based members of the team, the IEP team decided that the lack of implementation of the BIP did not negatively impact the student's ability to benefit from the education program. The team discussed its previous decision made on June 9, 2020 that once the student returns to a school setting, additional data would be obtained through an updated FBA and that daily data would be collected by the school staff in a manner that was responsive to the complainant's concerns about prior data collection.
6. A review of the audio recording of the October 1, 2020 IEP team meeting reflects that the IEP team did not have time to complete its consideration of the complainant's concerns. The team discussed that there was another meeting scheduled for October 8, 2020 to address the complainant's concerns and that further discussion could occur at that time.
7. A review of the audio recording of an October 8, 2020 IEP team meeting reflects that, at that time, the complainant reiterated his concern that the student was demonstrating aggressive behavior in the home and requested assistance. In response, the IEP team agreed that a referral would be made for the family for assistance from a behavior coach for virtual learning.
8. A review of the audio recording of the October 8, 2020 IEP team meeting reflects that at the meeting, the complainant requested an updated speech/language assessment "since it has been so long since [the student] has had one." Although no specific concerns were raised about the student's speech/language functioning, the IEP team agreed to conduct an updated assessment once face-to-face assessments could be safely arranged. The complainant then requested that the assessment be conducted virtually. The school-based members of the team reported that they were unaware of any speech/language assessments available online, but agreed that the assessment could be conducted in that manner if and when an appropriate online assessment can be identified.

## **IEP Implementation**

### Addressing IEP Goals

9. The reports of the student's progress towards achievement of the annual IEP goals reflects that the student achieved some of the goals on the IEP developed on April 11, 2019, but that he had not achieved the goals addressed through virtual learning prior to the revision of the IEP on June 9, 2020.

10. The school staff maintained logs of the provision of virtual instruction that document that the academic goals were addressed from the initiation of virtual learning until the IEP was revised on June 9, 2020. These logs state that the student “accessed information via Unique learning online program<sup>1</sup> and google classroom,” and that he made sufficient progress on the IEP goals until their revision on June 9, 2020. In addition, there is a progress report, dated May 29, 2020, which documents that the annual goal to improve the student’s speech/language functioning was addressed and that he made sufficient progress on the goal from the initiation of virtual learning until the IEP was revised on June 9, 2020.
11. A review of the audio recording of the October 8, 2020 IEP team meeting reflects that the complainant and school-based members of the team discussed that virtual instruction is being provided daily in English and math and every other day in science and social studies. They also discussed that there is one-to-one time with the teacher that is built into the student’s schedule, and that related services are provided through telehealth and Zoom.
12. There are progress reports, dated October 19, 2020 and November 5, 2020, which document that the annual goals that were revised on June 9, 2020, are currently being addressed through virtual learning and the student is making sufficient progress on the goals. However, there is no documentation that a referral was made for a behavior coach to assist the parents in supporting the student during virtual instruction as agreed to at the October 8, 2020 IEP team meeting.

#### Providing Transition Activities

13. There are reports, dated June 10, 2019, November 4, 2019, and February 5, 2020, which document that the student was engaged in all of the transition activities, and had completed some, but not all of them, prior to the Statewide closure of schools due to the COVID-19 pandemic.
14. The transition coordinator’s logs document that two (2) interest inventories were submitted on June 15, 2020. The logs also reflect that the student worked on identifying jobs in the community on April 1 and 6, 2020 and June 9 and 15, 2020. They further reflect the completion of a pictorial interest inventory on November 12, 2020. However, there is no documentation that the student is meeting with the transition coordinator on a weekly basis, or that the transition coordinator has worked with the student on identifying

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<sup>1</sup> The Unique learning system’s website describes it as a program designed to give students with complex learning needs meaningful access to the general education curriculum. It states that the program provides educators with a cloud-based platform to deliver differentiated, standards-aligned content with assessments, data tools, and evidence-based instructional support (<https://www.n2y>).

community signs, using a washing machine, or putting information into electronic formats with the frequency required by the IEP.

## **DISCUSSION/CONCLUSIONS:**

### **IEP Development**

In this case, the complainant alleges that the PGCPS did not follow proper procedures to ensure that the IEP has been reviewed and revised to address the student's needs, including virtual learning needs.

Based on the Findings of Facts #1 - #8, the MSDE finds that, while virtual learning was initiated when school buildings were closed, the PGCPS did not ensure that the IEP was reviewed and revised, as appropriate, at least annually during that time period, in accordance with 34 CFR §300.324, *Supplementary Fact Sheet Addressing the Risk of COVID-19 in Preschool, Elementary and Secondary Schools While Serving Children with Disabilities*, United States Department of Education, dated March 21, 2020, and the MSDE Technical Assistance Bulletin, *Serving Children with Disabilities Under IDEA During School Closures Due to the COVID-19 Pandemic*, dated March 30, 2020.

Based on the Findings of Facts #5 - #7, the MSDE further finds that the PGCPS did not ensure that the an IEP team was convened to address the complainant's lack of agreement regarding provision of virtual learning, in accordance with 34 CFR §300.324, *Supplementary Fact Sheet Addressing the Risk of COVID-19 in Preschool, Elementary and Secondary Schools While Serving Children with Disabilities*, United States Department of Education, dated March 21, 2020, and the MSDE Technical Assistance Bulletin, *Serving Children with Disabilities Under IDEA During School Closures Due to the COVID-19 Pandemic*, dated March 30, 2020.

However, based on the Findings of Facts #8 - #18, the MSDE finds that the IEP team has met and made decisions to address the student's virtual learning needs consistent with the data since June 9, 2020, in accordance with 34 CFR §§300 .101, .323, .324, *Supplementary Fact Sheet Addressing the Risk of COVID-19 in Preschool, Elementary and Secondary Schools While Serving Children with Disabilities*, United States Department of Education, dated March 21, 2020, and the MSDE Technical Assistance Bulletin, *Serving Children with Disabilities Under IDEA During School Closures Due to the COVID-19 Pandemic*, dated March 30, 2020. Therefore, this office finds that a violation occurred with respect to this aspect of the allegation from March 30, 2020 until the IEP was reviewed and revised on June 9, 2020.

Notwithstanding the violation, based on the Findings of Facts #15 - #18, the MSDE finds that the goals addressed from March 30, 2020 to June 9, 2020 had not been achieved prior to virtual learning and the student was able to make progress on the goals through virtual learning. Therefore, this office finds that the violation did not impact the student's ability to benefit from his education program and did not result in a loss of a FAPE to the student. Therefore, no student-specific corrective action is required to remediate the violation.

## **IEP Implementation**

The complainant also alleges that the PGCPs has not ensured that the annual IEP goals are being addressed through virtual learning and that the student is being provided with transition activities required by the IEP.

Based on the Findings of Facts #15 - #18, the MSDE finds that the annual IEP goals are being addressed through virtual learning in accordance with 34 CFR §§300.101 and .323. However, based on the Findings of Facts #13 and #18, the MSDE finds that the services of a behavior coach have not been provided as agreed to on October 8, 2020, in accordance with 34 CFR §§300.101 and .323. Therefore, this office finds that a violation occurred with respect to this aspect of the allegation.

Based on the Findings of Facts #8, #19, and #20, the MSDE finds that, while there is documentation that the student is being provided with transition activities, the documentation does not reflect that all of the activities are being provided with the frequency required by the IEP since June 9, 2020, in accordance with 34 CFR §§300.101 and .323. Therefore, this office finds a violation with respect to this aspect of the allegation.

### **ALLEGATIONS #2 AND #3**

### **DEVELOPMENT AND IMPLEMENTATION OF A SEIZURE ACTION PLAN SINCE OCTOBER 8, 2020**

#### **FINDINGS OF FACTS:**

15. A review of the written summaries and audio recordings of IEP team meetings held on June 9, 2020 and July 6, 2020 reflects that on those dates, the IEP team considered information from the complainant that the student has a seizure disorder. The IEP team also considered information from a doctor's note and seizure action plan. These documents reflect that, for a seizure lasting longer than five (5) minutes, 911 should be called, the parent notified, emergency medication administered, and the student removed from the classroom until back to baseline status. The IEP team agreed that the student requires a health plan (emergency care plan), and the school-based members of the team requested that the complainant provide additional information from the student's private physician about the emergency medicine to be administered for that purpose.
16. A review of correspondence between the complainant and the school and school system staff from July 15, 2020 to August 13, 2020 reflects that the school system staff followed up with the complainant to attempt to obtain the additional information needed from the student's private physician.
17. An electronic mail message (email) from the school system staff to the complainant, dated August 27, 2020, documents that on that date, the school staff began attempting to find a mutually agreeable date for the IEP team to convene regarding an unrelated matter. The purpose of the IEP team meeting was to complete corrective action required as a result of the MSDE's investigation of the complainant's State complaint #20-137.



18. An email from the complainant to the school system staff, dated August 31, 2020, documents that on that date, the complainant responded:

We would like to have a three (3) hour IEP meeting to include our concerns about [the student's] education program and discuss additional information to revise his IEP. We would like to minimize the number of IEP meetings as much as possible. We would like to have at least one (1) hour allocated to discuss our concerns and inputs. In other words, state complaint discussions should not go over two (2) hours. If more than two (2) hours is required for state complaint discussions, additional separate meeting should be scheduled.

19. An email from the school system staff to the complainant, dated September 2, 2020, documents that on that date, the school staff responded:

Since we do not know the other issues that you want to discuss at the IEP meeting, and since we cannot determine if 1 hour is an appropriate amount of time to address those issues, we will agree to two separate IEP meetings.

20. An email from the complainant to the school system staff, dated September 9, 2020, documents that on that date, the complainant provided his availability for the IEP team meetings and stated:

I would like to make sure that there is sufficient time to discuss the issues and the District has been provided with sufficient time and opportunity to address the issues before I take further actions.

21. An email from the school system staff to the complainant, dated September 10, 2020, documents that on that date, the school staff stated:

Please provide me with the concerns you want to discuss and the additional information you plan to share/provide on October 8, 2020. This will ensure the appropriate team members are in attendance to address your concerns.

22. An email from the complainant to the school system staff, dated September 15, 2020, documents that on that date, the complainant stated:

Concerns I [raise] and information I provide at the IEP meeting can be regarding any aspect of the education program of the student. I do not wish to limit the concerns and information to any particular area.

23. An email from the complainant to the school and school system staff, dated Sunday, September 27, 2020, documents that on that date, the complainant provided the school system with the additional information from the student's private physician that had been requested about the administration of medication to address the student's seizure disorder. The information from the private physician was that the student's seizures have lasted only two (2) minutes, and the prescribed medication for a seizure lasting longer than five (5) minutes has not yet been needed. The correspondence from the private physician also includes information about how the seizure activity presents itself, how long the student's postictal state<sup>2</sup> lasts, and what the student normally does during this stage. It further explains why the medication must be administered in a specific form.
24. A review of the audio recording of the October 8, 2020 IEP team meeting reflects that at the outset of the meeting, the complainant informed the team that the main purpose of the meeting was to complete the emergency care plan to address the student's seizure disorder. The PGCPS School Health Specialist explained that she had not had time to review the documentation from the student's private physician with the school nurse, and therefore, was not prepared to finalize a plan at the meeting. The complainant raised several issues that he wants to have addressed through the emergency care plan. The IEP team decided that the PGCPS School Health Specialist and school nurse would draft a proposed plan to be submitted to the complainant for his input. The school staff suggested that the complainant provide a written list of the issues he raised at the meeting to ensure that the proposed plan address them, and he refused.
25. A review of the audio recording of the October 8, 2020 IEP team meeting also reflects that, at the meeting, the team discussed that [REDACTED] was beginning to provide some face-to-face instruction, in addition to virtual learning, on November 9, 2020 to students whose parents indicated an interest in response to a survey taken in September 2020. The team discussed that the student was continuing to receive virtual instruction only, and that if the complainant was interested in having the student receive face-to-face instruction with the next group of students returning to the building, he would need to indicate his intent as soon as possible to allow for the school building to be prepared for more space and transportation to be arranged.

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<sup>2</sup> The postictal state is an abnormal condition that lasts for a period that begins when a seizure subsides and ends when the patient returns to baseline (<https://www.ncbi.nlm.nih.gov>).

26. An email from the complainant to the PGCPS School Health Specialist, dated October 29, 2020, documents that on that date, he informed the PGCPS School Health Specialist that he had been provided with a proposed emergency care plan the previous day, and requested revisions be made and sent to him by the end of that day.
27. An email from the PGCPS School Health Specialist to the complainant, dated October 30, 2020, documents that on that date, she responded that she was using his feedback to make revisions to the emergency care plan.
28. An email from the complainant to the PGCPS School Health Specialist, dated October 30, 2020, documents that on that date, the complainant requested a meeting with the PGCPS School Health Specialist to discuss his concerns about the draft emergency care plan. The complainant provided dates on November 2, 3, and 4, 2020 to meet.
29. An email from the PGCPS School Health Specialist to the complainant, dated November 2, 2020, documents that on that date, the PGCPS School Health Specialist agreed to meet with the complainant on November 4, 2020.
30. An email from the school system staff to the complainant, dated November 9, 2020, documents that on that date, another version of the emergency care plan was provided for the complainant's review following the November 4, 2020 meeting between the complainant and the school system staff.
31. An email from the complainant to the school system staff, dated November 10, 2020, documents that on that date, the complainant informed the school system staff that he is not in agreement with the proposed IEP amendment reflecting the emergency care plan. As a result, the PGCPS staff report that another IEP team meeting is being scheduled.

### **DISCUSSION/CONCLUSIONS:**

#### **Allegation #2                      Addressing Seizure Disorder**

In this case, the complainant alleges that the IEP team has not considered his concerns and addressed the student's needs related to his seizure disorder because the school system did not ensure that the IEP team that convened on October 8, 2020 had participation by staff with knowledge of the services needed to do so. He further alleges that the PGCPS has not revised the IEP to reflect the student's identified needs in this area.

Based on the Findings of Facts #21 - #37, the MSDE finds that the IEP team was unable to address the student's needs arising out of a seizure disorder on October 8, 2020 because the complainant refused to inform the school system staff of the concerns he wanted addressed at the meeting and because he had only provided them with medical information needed to do so a short time before the meeting.

Based on the Findings of Facts #21 - #37, the MSDE finds that the school and school system staff have obtained input from the complainant and attempted unsuccessfully to reach an agreement with him on how to address the student's needs arising out of the seizure disorder. As a result, an IEP team meeting is being scheduled to complete the plan to address the student's seizure disorder, in accordance with 34 CFR § §300.34, 320, and .324. Therefore, this office does not find that a violation occurred with respect to this allegation.

**Allegation #3                    Implementing Emergency Care/Seizure Action Plan**

Based on the Findings of Facts #21 - #37, the MSDE finds that the IEP team has not yet developed an emergency care/seizure action plan. Therefore, no plan exists to implement, in accordance with 34 CFR §§300.101 and .323. As a result, this offices does not find that a violation occurred with respect to the allegation.

**ALLEGATION #4    PRIOR WRITTEN NOTICE OF IEP TEAM MEETINGS HELD ON  
OCTOBER 1 AND 8, 2020**

**FINDINGS OF FACTS:**

**October 1, 2020 IEP Team Meeting**

32.     A review of a meeting invitation and emails between the parties reflects that an IEP team meeting was held on October 1, 2020 in order to complete corrective action required as a result of an investigation of the complainant's State complaint #20-137.

**Participation in Nonacademic Activities with Nondisabled Peers**

33.     The Letter of Findings issued by the MSDE in State complaint #20-137 reflects that the IEP stated that the student could not participate in nonacademic and extracurricular activities with nondisabled peers with the provision of supplementary aids and services. However, the IEP also stated that the parents would be encouraged to introduce the student to such activities in his home environment. The MSDE found that the wording of the IEP led the complainant to believe that the student can successfully participate in nonacademic activities with nondisabled peers with the provision of supplementary aids and services, and to expect that the school staff would assist him with engaging the student in such activities. The MSDE required the PGCPs to ensure that the IEP team reviewed and revised the IEP to ensure that it is written clearly with respect to the student's ability to participate with nondisabled peers in nonacademic and extracurricular activities.
34.     A review of the audio recording of the October 1, 2020 IEP team meeting reflects that the IEP team discussed that the student could not participate with nondisabled peers for extracurricular and nonacademic activities as part of his education program, but that the parents could explore opportunities for the student to participate in other activities with them in the community. The school system staff reported that they would provide the

parents with information on national parks and Special Olympics. However, the IEP and written summary of the meeting continue to state that the student “may return to his neighborhood school to participate in extracurricular activities with non-disabled peers, as appropriate.”

### Communication Protocol

35. The Letter of Findings issued by the MSDE on August 6, 2020 in State complaint #20-137 states that MSDE required the PGCPS to ensure that the IEP team developed a protocol for communication between the complainant and all school and school system staff. The protocol is to ensure that the complainant is provided with all documents before and after IEP team meetings in a timely manner and that he is provided with timely responses to all requests. The PGCPS was also required to provide documentation that the protocol that is developed by the IEP team is distributed to the appropriate individuals for implementation.
36. A review of the audio recording of the IEP team meeting held on October 1, 2020 reflects that at the meeting, the IEP team began discussing the communication protocol proposed by the school system, and the complainant expressed concern that he had not had sufficient time to review it prior to the meeting. However, the audio recording also reflects that the complainant proceeded to discuss the proposed protocol, questioning why it called for the PGCPS Compliance Specialist assigned to the family to have support from the PGCPS Compliance Office in monitoring responses provided to the complainant’s requests. The complainant also questioned why there was a change in staff serving as the PGCPS Compliance Specialist assigned to work with the family, and expressed his belief that the previous PGCPS Compliance Specialist was “intercepting” emails regarding his family.
37. A review of the audio recording of the October 1, 2020 IEP team meeting reflects that the PGCPS Compliance Specialist at the meeting explained that the former PGCPS Compliance Specialist is assisting him during the transition and that it was necessary to have assistance from the PGCPS Office of Compliance staff ensure the protocol is implemented when he is not available. The complainant asked about the qualifications for a PGCPS Compliance Specialist and the role of the position. The PGCPS Compliance Specialist at the meeting responded that the role is to ensure that the IEP team is compliant with the IDEA and COMAR requirements.
38. A review of the audio recording of the October 1, 2020 IEP team meeting reflects that the complainant asked how the PGCPS Compliance Specialist is trained and qualified to implement the communication protocol. At that time, the IEP team decided that the discussion was going beyond the purpose of reviewing the protocol, and the meeting adjourned without any decisions being made about the protocol. However, the written summary of the October 1, 2020 IEP team meeting states that the protocol was provided to and reviewed with the parent and would be distributed to relevant parties following the IEP team meeting.

### Behavioral Intervention Plan (BIP)

39. The Letter of Findings issued by the MSDE in State complaint #20-137 states that the MSDE required the PGCPs to ensure that the IEP team determines whether lack of implementation of the BIP to address aggression had a negative impact on the student's ability to benefit from his education program. If the team decided that there was a negative impact, the team was required to determine the compensatory services or other remedy for the violation.
40. A review of the audio recording of the October 1, 2020 IEP team meeting reflects that the IEP team discussed that the purpose of the BIP was to address aggressive behavior and that the data collected by the school staff demonstrates that the student was not displaying aggressive behavior that needed to be addressed through a BIP. The complainant indicated his disagreement. The team discussed its previous decision to conduct another Functional Behavioral Assessment (FBA) and to collect more specific daily data once the student returns to a school-based program, and to revisit the issue once additional data is obtained.
41. The written summary of the October 1, 2020 IEP team meeting reflects the IEP team's decisions regarding the BIP. It contains a statement of the actions proposed and refused and the basis for those actions, a description of the data used and any other factors considered, a statement that the parents have protection under the procedural safeguards, and sources for the parents to obtain assistance understanding these rights.

### **October 8, 2020 IEP Team Meeting**

#### Emergency Care/Seizure Action Plan

42. The written summary of the October 8, 2020 IEP team meeting and review of the audio recording of the meeting reflect that the PGCPs Health Services Department in collaboration with the school nurse, school team, and input from the parents, are developing a plan for the administration of medication and training for school and transportation staff. However, the written summary also states that development of a plan to address school health services is "not a function of the IEP team."

#### Speech/Language Assessment

The written summary of the October 8, 2020 IEP team meeting states that the IEP team decided that an updated speech/language assessment could not be conducted at this time because it unsafe to conduct in-person assessments due to the COVID-19 pandemic. While a review of the audio recording of the IEP team meeting reflects that the team agreed to conduct the assessment as soon as it is safe to conduct in person assessments or an online assessment is identified, the written summary of the meeting states that the team decided to reconvene to consider the complainant's request for an assessment upon receipt of additional guidance from the school

system. In addition, the written summary does not reflect other options that were considered and the IEP team's rejection of the complainant's request that the assessment be conducted virtually.

### Behavior Coach

43. The written summary of the October 8, 2020 IEP team meeting reflects the IEP team's discussion that the school staff had not seen interfering behaviors prior to virtual learning, but states that "the Behavior Coach can be available to consult." However, above this line on the document, are the words "Reason Rejected."

### **DISCUSSION/CONCLUSIONS:**

In this case, the complainant alleges that the PGCPSS did not provide him with proper written notice of the decisions made at the IEP team meetings and that it did not provide him with written notice before implementing decisions that were made, including implementation of the communication protocol.

Based on the Findings of Facts #9 - #13, and #45 - #47, the MSDE finds that the complainant has been provided with proper written notice of the decision made about the impact of lack of implementation of the BIP, in accordance with 34 CFR §300.503. Therefore, this office does not find that a violation occurred with respect to this aspect of the allegation.

In addition, based on the Findings of Facts #41 - #44, the MSDE finds that a communication protocol has not yet been completed, and therefore, that written notice of the content of the protocol developed by the IEP team was not required,<sup>3</sup> in accordance with 34 CFR §300.503. Therefore, this office does not find that a violation occurred with respect to this aspect of the allegation.

However, based on the Findings of Facts #41 - #44, the MSDE finds that the written notice reflecting that the communication protocol has been completed is not consistent with the audio recording of the October 1, 2020 IEP team meeting, in accordance with 34 CFR §300.503. Therefore, this office finds that the complainant has not been provided with prior written notice with respect to this matter, and that a violation occurred with respect to this aspect of the allegation.

In addition, based on the Findings of Facts #38 - #40, the MSDE finds that the written notice of the IEP team's decision about the student's ability to participate in extracurricular activities remains unclear, in accordance with 34 CFR §300.503. Therefore, this office finds that the complainant has not been provided with prior written notice with respect to this matter, and that a violation occurred with respect to this aspect of the allegation.

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<sup>3</sup> The complainant's concern that the school system staff have communicated with him consistent with their proposed protocol is not relevant to a determination of whether he was provided with a protocol developed by the IEP prior to implementation of the protocol since the team has not completed the development of a protocol.

Further, based on the Findings of Facts #21 - #37, and #48, the MSDE finds that the written notice that the seizure action plan is not a function of the IEP team is inconsistent with information from the audio recording of the October 8, 2020 IEP team meeting that it is being developed by the IEP team and the requirement that health plans be considered related services to be determined by the IEP team, in accordance with 34 CFR §§300.34 and .503. Therefore, this office finds that the complainant has not been provided with proper written notice with respect to this matter, and that a violation occurred with respect to this aspect of the allegation.

Based on the Findings of Facts #14 and #49, the MSDE further finds that the written notice of the decision regarding the complainant's request for a speech/language assessment does not reflect the options considered and rejected by the IEP team and the team's agreement to conduct the requested assessment as soon as it is safe to do so, in accordance with 34 CFR §300.503. Therefore, this office finds that the complainant has not been provided with proper written notice with respect to this matter, and that a violation occurred with respect to this aspect of the allegation.

Based on the Findings of Facts #13 and #50, the MSDE also finds that the written notice of the decisions made on October 8, 2020 does not clearly reflect the IEP team's decision to provide the complainant with consultation with a Behavior Coach, in accordance with 34 CFR §300.503. Therefore, this office finds that the complainant has not been provided with proper written notice with respect to this matter, and that a violation occurred with respect to this aspect of the allegation.

### **CORRECTIVE ACTIONS/TIMELINES:**

The IDEA requires that State complaint procedures include those for effective implementation of the decisions made as a result of a State complaint investigation, including technical assistance activities, negotiations, and corrective actions to achieve compliance (34 CFR §300.152). Accordingly, the MSDE requires the public agency to provide documentation of the completion of the corrective actions listed below<sup>4</sup>.

This office will follow up with the public agency to ensure that it completes the required action consistent with the MSDE Special Education State Complaint Resolution Procedures. If the public agency anticipates that the timeframe below may not be met, or if any of the parties seeks technical assistance, they should contact Dr. Nancy Birenbaum, Compliance Specialist, Family Support and Dispute Resolution Branch, MSDE, to ensure the effective implementation

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<sup>4</sup> The OSEP states that the public agency must correct noncompliance in a timely manner, which is as soon as possible, but not later than one (1) year from the date of identification of the noncompliance. The OSEP has indicated that, in some circumstances, providing the remedy could take more than one (1) year to complete. If noncompliance is not corrected in a timely manner, the MSDE is required to provide technical assistance to the public agency, and take tiered enforcement action, involving progressive steps that could result in the redirecting, targeting, or withholding of funds, as appropriate.



of the action.<sup>5</sup> Dr. Birenbaum can be reached at (410) 767-7770 and [nancy.birenbaum@maryland.gov](mailto:nancy.birenbaum@maryland.gov)

### **Student-Based**

The MSDE requires the PGCPS to provide documentation that the student is being provided with transition activities in the amount, nature, and frequency required by the IEP and that the complainant has been provided with consultation from a Behavior Coach consistent with the IEP team's decision.

The MSDE also requires the PGCPS to provide documentation that the IEP team has determined whether the lack of provision of all transition activities and Behavior Coach consultation has negatively impacted the student's ability to benefit from his education program, and if so, the compensatory or other services needed to remediate the loss of services.

The MSDE further requires the PGCPS to provide documentation that it has given the complainant written clarification of the decisions made by the IEP team about the communication protocol, referral for a Behavior Coach, the student's ability to participate in extracurricular and nonacademic activities, the seizure action plan (emergency care plan), and conducting a speech/language assessment.

### **School/System-Based**

The MSDE requires that the PGCPS provide documentation of the steps taken for its students placed [REDACTED] as follows:

- a. IEPs are reviewed and revised, no less than annually;
- b. An IEP team is convened when there is lack of parent agreement about virtual learning;
- c. Students are provided with all services through virtual learning consistent IEP team decisions; and
- d. Parents are provided with proper prior written notice of the decisions made by the IEP team.

As of the date of this correspondence, this Letter of Findings is considered final. This office will not reconsider the conclusions reached in this Letter of Findings unless new, previously unavailable documentation is submitted and received by this office within fifteen (15) days of the date of this correspondence. The new documentation must support a written request for reconsideration, and the written request must include a compelling reason for why the documentation was not made available during the investigation. Pending this office's decision on a request for reconsideration, the public agency must implement any corrective actions within the timelines reported in this Letter of Findings.

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<sup>5</sup> The MSDE will notify the Directors of Special Education of any corrective action that has not been completed within the required timelines.

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Ms. Trinell Bowman  
December 17, 2020  
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The parties maintain the right to request mediation or to file a due process complaint, if they disagree with the identification, evaluation, placement, or provision of a FAPE 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 Early Intervention/  
Special Education Services

c: Monica Goldson  
Barbara VanDyke  
■  
Dori Wilson  
Anita Mandis  
Nancy Birenbaum