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State Superintendent of Schools

*RE-ISSUED WITH ADDITIONS AUGUST 9, 2021*

July 28, 2021

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August 9, 2021  
Page 2

Dr. Jeff Gladhill  
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Reference: #21-078

Dear Parties:

The Maryland State Department of Education (MSDE), Division of Early Intervention and Special Education Services, 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 March 30, 2021, April 12, 2021, April 18, 2021, and May 7, 2021 the MSDE received a complaint from Disability Rights Maryland, hereafter, “the complainant,” on behalf of students with disabilities in Maryland. In that correspondence, the complainant alleged violations of provisions of the Individuals with Disabilities Act (IDEA) with respect to the students.

The MSDE investigated the following allegations:

**Anne Arundel County Public Schools (AACPS)**

1. The AACPS has not ensured that the Individualized Education Program (IEP) for the Student [REDACTED] has addressed his identified needs since May 7, 2020, in accordance with 34 CFR §§300.101, .320, .323, and .324
2. The AACPS has not ensured that the IEP team has addressed the lack of access to virtual learning for Student [REDACTED] and followed proper procedures to ensure that the student’s identified loss of a Free Appropriate Public Education (FAPE) will be remediated since March 30, 2020, in accordance with 34 CFR §§300.101, .320, .323, and .324.
3. The AACPS has not ensured that the IEP for the Student [REDACTED] has addressed her identified needs since April 18, 2020, in accordance with 34 CFR §§300.101, .320, .323, and .324.
4. The AACPS has not ensured that the IEP team has addressed the lack of access to virtual learning for Student [REDACTED] since March 30, 2020, in accordance with 34 CFR §§300.101, .320, .323, and .324

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August 9, 2021  
Page 3

### **Baltimore City Public School System (BCPSS)**

5. The BCPSS has not ensured that the IEP team has addressed the lack of access to virtual learning for Student [REDACTED] since March 30, 2020, in accordance with 34 CFR §§300.101, .320, .323, and .324.

### **Baltimore County Public Schools (BCPS)**

6. The BCPS has not ensured that the IEP team has addressed the lack of access to virtual learning for Student [REDACTED] since March 30, 2020, in accordance with 34 CFR §§300.101, .320, .323, and .324.
7. The BCPS has not ensured that the IEP team has addressed the lack of access to virtual learning for Student [REDACTED] since March 30, 2020, in accordance with 34 CFR §§300.101, .320, .323, and .324.
8. The BCPS has not ensured that the IEP addresses all of the identified needs and that the IEP team has addressed the lack of access to virtual learning for Student [REDACTED] since March 30, 2020, in accordance with 34 CFR §§300.101, .320, .323, and .324.
9. The BCPS has not ensured that the IEP team has addressed the lack of access to virtual learning for Student [REDACTED] since March 30, 2020, in accordance with 34 CFR §§300.101, .320, .323, and .324.
10. The BCPS has not ensured that students with speech/language needs within the school system have been offered a FAPE since March 30, 2020, as a result of a practice of providing only consultative speech/language services instead of direct speech/language therapy without making an individualized decision about each student's needs, in accordance with 34 CFR §§300.101, .320, .323, and .324.
11. The BCPS has not followed proper procedures to ensure that the identified loss of a FAPE to BCPS students with disabilities will be remediated since March 30, 2020, in accordance with 34 CFR §§300.101, .320, .323, and .324.

### **Calvert County Public Schools (CCPS)**

12. The CCPS did not ensure that the Student [REDACTED] was evaluated and identified as a student with a disability under the IDEA from March 30, 2020 until the 2020-2021 school year, in accordance with 34 CFR §§300.111, .301, and COMAR 13A.05.01.06.

### **Carroll County Public Schools**

13. The Carroll County Public Schools has not ensured that the IEP team has addressed the lack of access to virtual learning for Student [REDACTED] from March 30, 2020 to December 2020, and followed proper procedures to ensure that the identified loss of a FAPE will be remediated, in accordance with 34 CFR §§300.101, .320, .323, and .324.

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August 9, 2021  
Page 4

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### **Cecil County Public School System (CCPSS)**

14. The CCPSS has not ensured that students with disabilities within the school system have been offered a FAPE since March 30, 2020, as a result of a practice of providing all students with disabilities with thirty percent (30%) of their IEP services without making an individualized decision about each student's needs, in accordance with 34 CFR §§300.101, .320, .323, and .324.
15. The CCPSS has not ensured that the IEP team has addressed the lack of access to virtual learning for Student [REDACTED] since March 30, 2020, in accordance with 34 CFR §§300.101, .320, .323, and .324.

### **Harford County Public Schools (HCPS)**

16. The HCPS has not ensured that the IEP team has addressed the lack of access to virtual learning for Student [REDACTED] since March 30, 2020, in accordance with 34 CFR §§300.101, .320, .323, and .324.
17. The HCPS has not ensured that assessments recommended by the IEP team for Student [REDACTED] have been conducted and the results considered by the IEP team since March 30, 2020, in accordance with COMAR 13A.05.01.06.
18. The HCPS has not ensured that the IEP team has addressed the parental concern for the need for a change in educational placement for Student [REDACTED] since March 1, 2021, in accordance with 34 CFR §§300.114 - .116, and .324.

### **Howard County Public School System (HCPSS)**

19. The HCPSS has not ensured that the IEP team has addressed the lack of access to virtual learning for Student [REDACTED] and followed proper procedures to ensure that the identified loss of a FAPE to the student will be remediated since March 30, 2020, in accordance with 34 CFR §§300.101, .320, .323, and .324.
20. The HCPSS did not address the lack of access to virtual learning for Student [REDACTED] from March 30, 2020 until December 22, 2020, in accordance with 34 CFR §§300.101, .320, .323, and .324.

### **Montgomery County Public Schools (MCPS)**

21. The MCPS has not ensured that the IEP team has addressed the lack of access to virtual learning for Student [REDACTED] and has not followed proper procedures to ensure that the identified loss of a FAPE to the student will be remediated since March 30, 2020, in accordance with 34 CFR §§300.101, .320, .323, and .324.

### **Prince George's County Public Schools (PGCPS)**

22. The PGCPS has not ensured that the IEP addresses all of the identified needs and that the IEP team has addressed the lack of access to virtual learning for Student [REDACTED] since March 30, 2020, in accordance with 34 CFR §§300.101, .320, .323, and .324.

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August 9, 2021  
Page 5

23. The PGCPS did not ensure that the parent of Student [REDACTED] was provided with a copy of the IEP amended for virtual learning, and did not ensure that the IEP documents were translated into the parent's native language, in accordance with 34 CFR §§300.322, .324, .503, .504, Md. Code Ann., Education Article §8-405 and COMAR 13A.05.01.07.
24. The PGCPS has not ensured that the IEP team has addressed the lack of access to virtual learning for Student [REDACTED] since March 30, 2020, in accordance with 34 CFR §§300.101, .320, .323, and .324.
25. The PGCPS has not ensured that students have been evaluated and identified as students with disabilities under the IDEA and that reevaluations have been conducted in a timely manner since March 30, 2020, in accordance with 34 CFR §§300.111, .301 and COMAR 13A.05.01.06.

#### **Washington County Public Schools (WCPS)**

26. The WCPS did not ensure that the parent of Student [REDACTED] was provided with a copy of the amended IEP to address virtual instruction in a timely manner, in accordance with 34 CFR §§300.324, .503 and COMAR 13A.05.01.07.
27. The WCPS has not ensured that the IEP team has addressed the lack of access to virtual learning for Student [REDACTED] since March 30, 2020, in accordance with 34 CFR §§300.101, .320, .323, and .324.

#### **Wicomico County Board of Education (WCBOE)**

28. The WCBOE has not ensured that students have been evaluated and identified as students with disabilities under the IDEA and reevaluations conducted in a timely manner since March 30, 2020, in accordance with 34 CFR §§300.111, .301 and COMAR 13A.05.01.06.
29. The WCBOE has not ensured that the IEP team has addressed the lack of access to virtual learning for Student [REDACTED] since December 16, 2020, in accordance with 34 CFR §§300.101, .320, .323, and .324.

#### **LEGAL REQUIREMENTS:**

At the onset of the COVID-19 pandemic, the United States Department of Education (USDOE) issued guidance stating:

If a Local Education Agency (LEA) closes its schools to slow or stop the spread of COVID-19, and does not provide any educational services to the general student population, then an LEA would not be required to provide services to students with disabilities during that same period of time. Once school resumes, the LEA must make every effort to provide special education and related services to the child in accordance with the child's IEP.

The USDOE further stated:

If an LEA continues to provide educational opportunities to the general student population during a school closure, the school must ensure that students with disabilities also have equal access to the

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August 9, 2021  
Page 6

same opportunities, including the provision of FAPE (*Questions and Answers on Providing Services to Children with Disabilities During the Coronavirus Disease 2019 Outbreak*, March 2020).

Subsequently, the USDOE issued guidance that emphasized the obligation of an LEA to make every effort to offer a FAPE to students with disabilities during the pandemic, and stated that, in doing so “school systems must make local decisions that take into consideration the health, safety, and well-being of all their students and staff.” The USDOE stated:

The Department understands that, during this national emergency, schools may not be able to provide all services in the same manner they are typically provided. While some schools might choose to safely, and in accordance with state law, provide certain IEP services to some students in-person, it may be unfeasible or unsafe for some institutions, during current emergency school closures, to provide hands-on physical therapy, occupational therapy, or tactile sign language education services.

The Department encourages parents, educators, and administrators to collaborate creatively to continue to meet the needs of students with disabilities. Consider practices such as distance instruction, teletherapy and tele-intervention, meetings held on digital platforms, online options for data tracking, and documentation. In addition, there are low-tech strategies that can provide for an exchange of curriculum-based resources, instructional packets, projects, and written assignments.

Further, while stating that the IDEA timelines are not waived during the pandemic, the USDOE stated “as a general principal, during this unprecedented national emergency, public agencies are encouraged to work with parents to reach mutually agreeable extensions of time, as appropriate (*Supplemental Fact Sheet Addressing the Risk of COVID-19 in Preschool, Elementary and Secondary Schools While Serving Children with Disabilities*, March 21, 2020).

In order to make sure that students with disabilities are offered a FAPE, the IDEA requires that the public agency ensure that the students are identified, located, and evaluated for the need for special education and related services in a timely manner within sixty (60) days of receipt of parental consent for the evaluation (34 CFR §§300.111 and .301). In addition, in Maryland, the evaluation must be completed within ninety (90) days of the date that a written referral was made for the evaluation (COMAR 13A.05.01.06).

A FAPE is offered when a student identified as a student with a disability under the IDEA is provided with the services required by an IEP that addresses the student’s individualized needs, including any behaviors of the student that interfere with access to special education (34 CFR §§300.101, .320, .323, and .324).

An IEP is to be developed by an IEP team with parent participation. Parent participation means not only attending the IEP team meeting and providing input into the team’s decisions, but also fully understanding the decisions made. In order to ensure parent understanding and the opportunity to dispute the IEP team’s decisions, public agency must provide written notice to the parent before implementing the proposal or refusal to initiate a change in the identification, evaluation, change in educational placement or the provision of a FAPE to a student. This Prior Written Notice (PWN) must be provided in the parent’s native language unless it is clearly not feasible to do so (34 CFR § 300.322 and .503).

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August 9, 2021  
Page 7

In addition, in Maryland, the parent must also be provided with a copy of the IEP within five (5) business days of the IEP team meeting in which changes are made to the IEP. This document must also be provided to the parent in the parent's native language if requested by the parent and if the parent's native language is spoken by more than one percent (1%) of the student population within the school system (Md. Code Ann. Education Article §8-405 and COMAR 13A.05.01.07).

The IEP must be reviewed and revised by the IEP team at least annually to determine whether the annual IEP goals are being achieved. The IEP must also be reviewed and revised, as appropriate, to address any lack of expected progress towards the goals and to address any of the student's needs, including needs identified through the results of a reevaluation. In Maryland, if the IEP team determines the need for additional data as part of a reevaluation, the team must consider the assessment results in reviewing the IEP within ninety (90) days of determining that the assessment data is needed (34 CFR §§300.101, .320, .323, and .324, and COMAR 13A.05.01.06).

In making changes to the IEP after the annual IEP review, the parent and the public agency may agree not to convene the IEP team for the purposes of making those changes, and instead develop a written document to amend or modify the IEP (34 CFR §300.324). Many public agencies utilized this procedure to make needed changes to IEPs as quickly as possible as a result of the sudden shift to virtual learning at the onset of the COVID-19 pandemic.

In light of the unique circumstances created by the need for virtual at-home instruction, parents, including the parents of disabled students, have been expected to arrange for a responsible person to make the student available for instruction and to provide any necessary supervision during the virtual school day. This responsibility includes assisting the student with logging onto the computer and redirecting the student back to instruction when needed. These expectations are analogous to other longstanding parental expectations such as arranging for a child to be safely accompanied to and from the bus stop for transportation when traveling to and from the school building.

A student may require new and additional services to recover from any widening of the gap between performance and grade level expectations during virtual learning. In addition, compensatory services may be owed to the student if the public agency did not offer a FAPE during the period of virtual learning.

The award of compensatory services is an equitable remedy created by the Courts to address the denial of the offer of a FAPE to a student with a disability. The USDOE has explained that, when conducting IDEA State complaint investigations, the State Education Agency (SEA) must determine an appropriate remedy, which can include compensatory services, when it concludes that the public agency **has violated a requirement of the IDEA** [Emphasis added] resulting in the failure to provide a FAPE (*Letter to Lipsitt*, 72 IDELR 102, April 19, 2018).

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August 9, 2021  
Page 8

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**ALLEGATIONS #1 - #4 ANNE ARUNDEL COUNTY PUBLIC SCHOOLS (AACPS)**

**Student** [REDACTED]

**FINDINGS OF FACTS:**

1. The Student, [REDACTED] is seven (7) years old, is identified as a student with Autism under the IDEA, and has an IEP that requires special education services. He attended [REDACTED] until the Statewide closure of school buildings in March 2020 and the initiation of virtual learning due to the COVID-19 pandemic.

IEP in Effect on March 30, 2020

2. The IEP in effect on March 30, 2020 required the following:
  - a. Five (5) hours per week of special education instruction to assist the student with achieving goals to improve written expression and learning behaviors.
  - b. Accommodations of small group instruction and reduction of distractions to self and others, and monitoring of test responses to make sure the student is responding to the correct question.
  - c. Daily supplementary aids and services including:
    - i. Allow use of manipulatives;
    - ii. Check for understanding;
    - iii. Picture schedule;
    - iv. Check-ins and frequent monitoring of independent work;
    - v. Keeping expectations and assignments visible in the classroom;
    - vi. Clear verbal instructions;
    - vii. Wait time for responses;
    - viii. Ensure that the student is paying attention before starting directions;
    - ix. Provision of a copy of high frequency words during writing;
    - x. Break down assignments into smaller units;
    - xi. Delete extraneous information on assignments and assessments;
    - xii. Use of sensory breaks and strategies;
    - xiii. Advance preparation for schedule changes;
    - xiv. Opportunities for additional movement breaks;
    - xv. Use of a variety of seating options; and
    - xvi. Desk location in close proximity to the teacher.
  - d. Use of noise reduction headphones “as needed.”
  - e. Occupational therapist consult “periodically” for a minimum of one (1) time per quarter.



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August 9, 2021  
Page 9

#### April 8, 2020 IEP Amendment

3. On April 8, 2020, the IEP was amended to require one (1) thirty (30) minute session of special education instruction per week through video conferencing. The IEP was amended to discontinue the accommodation of monitoring of test responses to make sure the student is responding to the correct question without explanation. The only supplementary aids and services to be continued were checks for understanding, clear verbal instruction, gaining the student's attention before giving directions, providing a copy of high frequency words during writing and the occupational therapist consultation. There is no documentation of the basis for discontinuing supports such as the use of manipulatives, picture schedule, check-ins and frequent monitoring of independent work, keeping expectations and assignments visible, wait time for responses, breaking down assignments into smaller units, deleting extraneous information on assignments and assessment when possible, use of sensory breaks and strategies, and advance preparation for schedule changes.

#### January 4, 2021 IEP Team Meeting

4. The written summary of an IEP team meeting held on January 4, 2021 reflects the following:

The IEP team considered information from the student's parent that the student has displayed increased anxiety since the initiation of virtual learning. She reported that he hides when he sees other students online, and she has been unable to assist him to access instruction using this method. The IEP team documented that, because the student has not regularly participated in virtual learning, "there is no data to report progress since the 4<sup>th</sup> quarter of the 2019-2020 school year."

The IEP team discussed that the school system had previously sent equipment to the student's home to increase the student's strength and flexibility to support virtual learning but that "the family did not want to use them." The team also discussed that the school staff had previously offered to send home materials to assist the student with focusing on school, work through mindfulness exercises, and relaxation strategies to increase focus, but that the "family did not want these services."

The IEP team discussed that the school staff had been attempting to meet with the family outside of the school day to introduce a behavior plan to support virtual instruction, which would involve the use of a structured incentive program, but that the family was not responsive.

The parent reported that it was easier for the student to work with the family using the materials provided by the school system than to attempt to engage him in virtual learning. However, she acknowledged that he is unable to receive a FAPE in this manner and indicated a willingness to accept the supports at that time.

The IEP team discussed that, due to the student's Attention Deficit Hyperactivity Disorder (ADHD), it is difficult for him to sit for extended periods of time and he requires movement breaks. The team decided that the teacher would create and embed movement breaks into the day and that

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August 9, 2021  
Page 10

the school staff would provide the family with a response board for the adult who is supervising the student at home so that if he is not visible during instruction, he can provide a response.

Based on the data that the student's anxiety increases during class activities and that he does better with one-to-one instruction, the team decided that the student would join his class for short periods of time as he can tolerate it after he becomes consistently successful in attending a one-to-one morning break out session, which would start at thirty (30) minutes and gradually increase in time. The IEP team revised the IEP to include a Behavioral Intervention Plan (BIP) to provide the student with positive behavioral interventions and supports and strategies to address interfering behavior during virtual learning. The IEP was revised to include the amount of special education instruction and all of the supports required by the April 8, 2020 IEP. In addition, the IEP was revised to add an incentive reward system for desired behaviors, social stories for problem solving, independence, and motivation, as well as calming strategies, prior notice of scheduled drills and other changes to routines with designated adult support, a quiet work space, and a locker close to the classroom door when instruction is provided in the school building.

The IEP team also decided to reconvene in several weeks to consider the student's progress.

#### January 25, 2021 IEP Team Meeting

5. On January 25, 2021, the IEP team reconvened. The written summary of the IEP team meeting reflects the following:

The IEP team considered information that the student had not been logged onto the computer for virtual instruction, but was being logged onto the computer for the provision of virtual services from a private therapist and was being successfully provided with therapy in that manner. The private therapist opined that, even if the student was logged onto the computer for virtual learning, he would not be able to access instruction due to his social, emotional, and behavioral needs. The IEP team further considered information from the parent that several members of the family are "immunocompromised," which was a factor she was considering when determining whether to return the student for in-person instruction in the school building when that becomes available.

Both the private therapist and the complainant requested that the school system place an adult in the home to assist the student with participating in virtual learning. The IEP team rejected the request for services to be provided in-person in the home due to public health and safety concerns.

The complainant asserted that, without the provision of in-person services in the home, the school system was shifting the burden for the provision of a FAPE to the family. The IEP team disagreed based on the fact that there was no information that the student had been logged onto the computer to obtain access to the supports offered, and thus, no data that he could not access virtual learning with those supports. The team decided that the school staff would collaborate with the private

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August 9, 2021  
Page 11

therapist to use similar language with the student as is used in private therapy in order to engage the student in virtual learning.

The team considered information from the parent that the student works better with a consistent person and relationships that have been developed. The team also considered information that the case manager, who has a relationship with the student, had been available to meet with the student individually each day, but that the student was never logged onto the computer to do so. The parent agreed to meet with the case manager to try to reestablish the relationship with the student.

The school staff also suggested that the student be logged onto the computer to observe the class, without having to participate, and to observe a video/zoom call in order to desensitize him to the use of the device. The private therapist expressed the opinion that it would be inappropriate to expose the student to others because it will create anxiety. However, the IEP team decided that it was appropriate to make an attempt.

#### February 22, 2021 IEP Team Meeting

6. On February 22, 2021, the IEP team reconvened. The written summary of the IEP team meeting reflects that the IEP team considered information that, while the case manager was prepared to provide daily one-to-one sessions with the student, he was only logged on for the past two (2) days. The parent and school-based members of the team agreed that those two (2) sessions were productive. Based on that information, the IEP team decided to attempt to include “guest stars” into the sessions, which would be other members of the student’s academic team to generalize the positive rapport being developed by the case manager, and to provide the parent with photographs of the additional staff for the student prior to their inclusion in the sessions.

#### March 23, 2021 IEP Team Meeting

7. On March 23, 2021, the IEP team reconvened. The written summary of the IEP team meeting reflects that the IEP team considered information that the student had participated in the last two (2) sessions with the case manager after being logged onto the computer by the parent. The team considered information that the sessions were able to be expanded beyond thirty (30) minutes, with one (1) session lasting forty-five (45) minutes, and the other for one (1) hour, and that the student was able to complete academic assignments.

### **DISCUSSION/CONCLUSIONS:**

#### **Allegation #1 IEP Amendment for Virtual Learning**

In this case, the complainant alleges that the IEP was amended for virtual learning to reduce the amount of services to be provided without explanation for how it would continue to offer the student a FAPE.

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August 9, 2021  
Page 12

Based on the Findings of Facts #1 - #3, the MSDE finds that the AACPS did not ensure that the IEP for Student [REDACTED] addressed his needs when services and supports were reduced without explanation from May 7, 2020 to January 4, 2021, in accordance with 34 CFR §§300.101, .320, .323, and .324.

However, based on the Findings of Facts #4 - #6, the MSDE finds that the revisions made to the IEP since January 4, 2021 have been based on the data about the student's needs, in accordance with 34 CFR §300.324. Therefore, this office finds that a violation occurred from May 7, 2020 to January 4, 2021 with respect to Allegation #1.

**Allegation #2                      Addressing Lack of Access to Virtual Learning and Determination of How to Remediate the Resulting Loss of a FAPE**

In this case, the complainant asserts that the student “was unable to participate in distance learning when the 2020-2021 school year began, despite his parent’s efforts to facilitate his access and participation” and that the AACPS did not explore alternatives to virtual learning for the student despite the difficulty he had with accessing instruction in this manner. The complainant further asserts that the school system has not taken appropriate steps to remediate the denial of a FAPE as a result of the student’s inability to access virtual learning.

Based on the Findings of Facts #5 - #7, the MSDE finds that the student’s parent refused services that were offered by the school system to assist the student with accessing virtual learning, and there is no documentation that the student would not have benefitted from virtual learning if the services that were offered had been accepted, in accordance with 34 CFR §§300.101, .320, .323, and .324. Therefore, this office does not find that a violation occurred with respect to Allegation #2.

**Student [REDACTED]**

**FINDINGS OF FACTS:**

8. The Student, [REDACTED] is six (6) years old, is identified as a student with a Developmental Delay under the IDEA, and has an IEP that requires special education services. She attended [REDACTED] until the Statewide closure of school buildings in March 2020 and the initiation of virtual learning due to the COVID-19 pandemic. Since March 1, 2021, the student has been receiving instruction in the school building and virtually.
9. Prior to the closure of school buildings in the Spring of 2020 due to the COVID-19 pandemic, the student’s IEP included goals to address identified needs in the areas of language and literacy, math, learning behaviors, expressive language, and speech articulation. It also included eleven (11) hours and thirty (30) minutes per week of special education instruction and three (3) hours per month of related speech/language services to assist the student with achieving the goals.
10. On April 8, 2020, the IEP was amended to address only the language and literacy, math, and speech articulation goals and to reduce the amount of special education services to three (3) hours per month and related speech/language services to thirty (30) minutes per month, without explanation.

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August 9, 2021  
Page 13

11. There is electronic mail (email) correspondence, dated August 24, 2020, which documents that on that date, the student's parent asked the school staff to follow up on a request she previously made for an IEP team meeting.
12. There is email correspondence, dated August 25, 2020, which documents that on that date, the school staff responded to the student's parent that an IEP team could not be convened until after the start of the 2020-2021 school year because the school staff were on summer break.

#### September 9, 2020 IEP Team Meeting

13. The written summary of an IEP team meeting held on September 9, 2020 documents the following:

The IEP team considered information from the student's parent that she enrolled the student in a private pre-school program that provides physical activities and creative play in the morning, and that the student was able to maintain attention and focus on instruction for three (3) to five (5) minutes at a time. The parent reported that she wanted the student to continue to participate in this program and also participate in Kindergarten at [REDACTED] in the afternoon through virtual learning for the 2020-2021 school year.

The IEP team decided that the student would be provided with special education instruction for up to thirty (30) minutes per day five (5) days per week and related speech/language therapy one for up to thirty (30) minutes per day for one (1) day per week. The team documented that the decision was based on information from the parent that the student can attend to instruction for only three (3) to five (5) minutes at a time, and the need to accommodate the student's private pre-school schedule.

14. There is email correspondence, dated September 16, 2020, which documents that on that date, the student's teacher contacted the parent about the student not participating in virtual learning that day. The parent informed the school staff that she attempted to assist the student with accessing virtual learning, but that the student "completely lost it," and was "screaming and biting her own arm" while the parent was physically restraining her. The parent further reported that the student was unavailable for instruction and that she would try again the next day.

#### September 29, 2020 IEP Team Meeting

15. The written summary of an IEP team meeting held on September 29, 2020 documents the following:

The student's parent reported that in her private preschool setting, the student works at a side table with staff who work with the student "on sensory things while the rest of the class works with the teacher." She explained that, while "the live setting will not be perfect," the student is not successful with virtual learning, and that she would like for the student to receive in-person instruction in the school building.

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August 9, 2021  
Page 14

The IEP team considered the difficulty the student's parents were having assisting the student with accessing virtual learning. The school staff reported that the adult support required by the IEP was present during virtual learning each day, but that the parents were having difficulty getting the student to access the service. The school-based members of the team noted that during one (1) session, the student's parent physically restrained the student in an attempt to stop her from roaming around the room during instruction, which was not successful. The school staff suggested discontinuing this practice, but there is no documentation of the offer of parent counseling and training on how to manage the student's interfering behavior in an alternate manner.

The school staff informed the parent of the option to have the student participate in the AACPS Alternate Attendance Program. However, the parent decided to continue to attempt to assist the student with accessing virtual learning. A description of the Alternate Attendance Program on the AACPS website states that it was designed for families who cannot support students logging onto the computer for synchronous virtual learning on specific days for specific learning blocks on a routine, extended basis. Through the Alternate Attendance Program, students are provided with recorded lessons to assist with the completion of weekly assignments.

16. There is electronic mail correspondence (email), dated October 19, 2020, which documents that the student's parent informed the school staff that the student would be out of school on that date and the next in order to participate in a sleep study. In that email, the parent reported that she was informed that all students returning to school buildings will be required to wear face masks, and inquired about exceptions to the requirement. She explained that the student has breathing problems and cannot wear a mask, but that nonetheless, the family wanted her to receive in-person instruction.
17. There is email correspondence, dated October 19, 2020, which documents that on that date, the school staff responded to the parent that there would be no exceptions to the requirement for face masks. However, there are also emails among the school system staff that demonstrate that in October 2020, the AACPS was developing a mask accommodation application and review process for students who cannot wear masks in preparation for the return of students to school buildings, and since that time, the student began receiving some instruction in the school building.
18. There are emails among AACPS staff that document that, in October 2020, the school system was in the process of beginning to reopen separate special education centers for some face-to-face instruction, but had not yet begun to reopen neighborhood schools such as the student's school.

#### December 18, 2020 IEP Team Meeting

19. The written summary of an IEP team meeting held on December 18, 2020 documents the following:

The IEP team considered information that the student continued to be unable to access virtual learning due to her inability to focus. The student's parent reported that the student begins throwing things when her parents open the computer, and that she throws the telephone when they attempt to log on to instruction through that method. She further reported that the student has been

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August 9, 2021  
Page 15

able to work one-on-one with her parents using the packets of materials provided by the classroom teacher. The documentation reflects that, while the student was performing on grade level in math and reading, she was unable to make progress on her IEP goals due to her inability to access specialized instruction through virtual learning.

The complainant requested that a Functional Behavioral Assessment (FBA) be conducted in order to develop a Behavioral Intervention Plan (BIP) to assist the student with accessing virtual learning. The IEP team denied the request based on information from the school psychologist that observations of the student must be conducted as part of a FBA and from the school staff that they do not have access to the student in order to observe her.

The complainant also requested that in-person instruction be provided to the student in the home. The IEP team rejected that request based on information from the Anne Arundel County Health Department that this would create a public health concern.

The complainant further requested a change of educational placement to a more restrictive environment such as a nonpublic separate special education classroom. The IEP team rejected that request based on information from the school staff that the student's performance when she logs onto the computer indicates that she could be successful in the current placement with increased participation.

The school staff suggested strategies for increasing the student's attention span in the virtual setting. These included using a different technology device such as an iPad, using the Chromebook for fun activities outside of school hours to increase interest in the device, leaving Google Meets and specialized instruction sessions on in the background even when the student is not actively participating in order to allow her to get comfortable with it, building a reward system such as a sticker chart for attending sessions, and providing one-to-one sessions with the student each day for increasing periods of time.

The IEP team decided that at the first of the new year after implementation of these strategies, it would consider the need for recovery services for the student. However, there is no documentation that the IEP team has convened to do so.

20. On March 1, 2021, the student began receiving some instruction in the school building.
21. There are reports of the student's progress towards achievement of the annual IEP goals that document that some of the goals could not be addressed through virtual learning. While the student was making sufficient progress towards achieving the remaining goals by the end of the 2019-2020 school year, she has not made sufficient progress on any of the goals during the 2020-2021 school year.

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August 9, 2021  
Page 16

## **CONCLUSIONS:**

### **Allegation #3 IEP Amendment for Virtual Learning**

In this case, the complainant alleges that the IEP was amended for virtual learning to reduce the amount of services to be provided without explanation for how it would continue to offer the student a FAPE and did not ensure that the parent's concerns were addressed in order for an appropriate IEP to be in place by the start of the 2020-2021 school year.

Based on the Findings of Facts #8 - #10, the MSDE finds that the AACPS did not ensure that the IEP for Student [REDACTED] addressed her needs when services and supports were reduced without explanation on April 8, 2020, in accordance with 34 CFR §§300.101, .320, .323, and .324.

In addition, based on the Findings of Facts #11 - #13, the MSDE finds that the AACPS did not ensure that the IEP team met to address the parent's concerns to have an IEP in place prior to the start of the 2020-2021 school year, in accordance with 34 CFR §§300.323 and .324.

However, based on the Finding of Fact #13, the MSDE finds that the revisions made to the IEP on September 9, 2020 were consistent with the information about the student's needs, in accordance with 34 CFR §300.324. Therefore, this office finds that a violation occurred from April 8, 2020 until September 9, 2020 with respect to Allegation #3.

### **Allegation #4 Addressing Lack of Access to Virtual Learning**

In this case, the complainant alleges that the AACPS has not ensured that the IEP team has addressed the student's inability to access virtual learning, and refused to accommodate her inability to wear a face mask when in-person instruction resumed in the school building.

Based on the Findings of Facts #16 - #18 and #20, the MSDE finds that, while the school staff provided inaccurate information to the parent about the requirements for students to wear face masks, there is documentation that the student is being accommodated.

Based on the Findings of Facts #11, #13 - #15, #19, and #21, the MSDE finds that, while the IEP team has been aware that the parents of Student [REDACTED] are unable to assist the student with accessing virtual learning, it did not consider strategies for the parents to use to increase the student's interest in virtual learning until December 18, 2020. Further, based on those Findings of Facts, the MSDE finds that the IEP team has not considered parent counseling and training on managing the student's interfering behavior when virtual learning is attempted, since March 30, 2020, in accordance with 34 CFR §§300.101, .320, .323, and .324.

In addition, based on the Finding of Fact #19, the MSDE finds that the AACPS has not ensured that the IEP team has convened to consider the effectiveness of strategies recommended on December 18, 2020 and the need for recovery services consistent with the team's decision made on December 18, 2020, in accordance with 34 CFR §§300.101 and .323. Therefore, this office finds that a violation occurred with respect to Allegation #4.



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August 9, 2021  
Page 17

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## **ALLEGATION #5**

## **BALTIMORE CITY PUBLIC SCHOOL SYSTEM (BCPSS)**

### **FINDINGS OF FACTS:**

22. The Student [REDACTED] is five (5) years old, is identified as a student with Multiple Disabilities under the IDEA, including Speech/Language Impairment, Traumatic Brain Injury, Orthopedic Impairment, and an Other Health Impairment related to a history of neonatal asphyxia and subsequent quadraparesis and seizure disorder. She has an IEP that requires special education and related services.
23. The student attended [REDACTED] a public separate special education school, until the Statewide closure of school buildings in March 2020 and the initiation of virtual learning due to the COVID-19 pandemic. In December 2020, the student began receiving instruction in the school building and virtually, but returned to all virtual learning in January 2021. She is currently offered instruction both virtually and in the school building.

### **2019-2020 School Year**

#### January 23, 2020 IEP

24. The IEP in effect prior to the pandemic, dated January 23, 2020, reflects that the student is non-verbal, non-weight bearing, receives nutrition through a gastrostomy tube (G-tube), and is unable to complete self-care tasks independently. The IEP states that the student is functioning at the “10-12 month level in the area of cognition,” and at the twelve (12) month level in pre-academics and the ten (10) month level in social foundations. She was reported to have made progress on her goal to improve gross motor development, having progressed from the “newborn level” in October 2019 to the three (3) month level. She was also making progress on her receptive language goal, eye gazing three (3) out of five (5) opportunities to a preferred item, making verbal approximations of some words, and fully participating in simple speech-gesture games. The student was reported to continue to function at the “newborn level” in the area of fine motor skills and at the six (6) month level in areas of self care.

The IEP required the provision of special education and related occupational therapy, physical therapy, and speech/language services in a public separate special education school. It also required the use of adaptive equipment to facilitate weight bearing through the lower extremities, increase muscle strength, and allow for head control. It further required use of an activity chair with headrest, backrest, footrest, arm prompts, thoracic prompts, chest and lap belt and tray to facilitate erect sitting posture necessary for learning.

The IEP further required the provision of specialized transportation and nursing services throughout the school day and during transportation. The nursing services included medication administration, G-tube feeding, and assistance with all activities of daily living.

The IEP required the implementation of a monthly communication system in which school staff would communicate with the student’s parent about the student’s progress. The communication was to be provided in the parent’s native language of Spanish.

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August 9, 2021  
Page 18

25. The parent contact log for the student maintained on the Maryland online IEP system reflects that on April 16 and 17, 2020, the school staff communicated with the student's parent by telephone, in Spanish, about virtual learning.
26. An email, dated April 20, 2020, documents that on that date, the complainant contacted the BCPSS legal staff and informed him that the school staff had been "in frequent contact with [the parent] and that documents are translated via Class Dojo, but that virtual meetings are primarily in English." The complainant asked if it was possible to make sure all meetings, classroom sessions, and therapy sessions could be made accessible to the parent in Spanish. She also reported that the parent did not have an assistive technology device for the student to access virtual learning and requested assisting obtaining a device.
27. An email, dated April 20, 2020, documents that on that date, the school staff reported to the BCPSS legal staff that the school staff "has been in constant contact with the parent of [REDACTED] providing educational and therapeutic services." The school staff stated that "when initially contacted (using the translation services in Class Dojo) regarding technology the parent informed us that there were no technology needs. She said she had a device and internet service." The school staff further reported that their English Speakers of Other Languages (ESOL) teacher would be included on the student's virtual classroom and therapy sessions.
28. An email, dated April 21, 2020, documents that on that date, the BCPSS legal staff responded to the complainant with the information provided by the school staff.
29. An email, dated April 23, 2020, documents that on that date, the complainant contacted the BCPSS legal counsel and reported that the student had been provided with an assistive technology device to access virtual learning. The complainant stated that while the computer was configured in English, the parent was able to obtain assistance from the school staff using a Spanish translation service to set up the computer for the student.
30. The parent contact log reflects that, between May 18, 2020 and June 12, 2020, the student was not consistently logged onto the computer to participate in virtual learning despite voice mail and text messages left on the parent's telephone, in Spanish, reminding her of each session. Inquiries were made by the school staff to the parent through this means about whether the parent was having trouble logging onto the computer when the student did not show up for services. There are notations indicating that the parent either did not respond or responded that the student was not available at the time of the scheduled session because she was taking a bath or had fallen asleep.
31. The reports of the student's progress towards achievement of the annual IEP goals made during the 2019-2020 school year reflect that the student made sufficient progress on the goals.

### **2020-2021 School Year**

32. The parent contact log reflects that, on August 28, 2020, the IEP chairperson contacted the student's parent in Spanish to schedule an IEP team meeting to address information from the parent

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August 9, 2021  
Page 19

that, while virtual learning worked well and she was comfortable continuing it in the fall, related services were difficult to implement virtually.

33. The parent contact log reflects that at the start of the 2020-2021 school year, the school staff attempted to provide special education services to the student, but that the student was not consistently logged onto the computer to receive the services. The log reflects that the student's parent was provided with email links and text messages for how to log onto services, that the school staff attempted to contact the parent by telephone with a Spanish language interpreter and left messages for her to advise if there was a problem, but that they received no response.

#### September 10, 2020 IEP Team Meeting

34. On September 10, 2020, the IEP team convened to address the student's lack of participation in virtual learning. The IEP and written summary of the September 11, 2020 IEP team meeting reflects the following:

The team discussed that bi-lingual providers were used when possible and that a language interpreter service was being used when communicating with the parent. The team decided that, in addition, support would be obtained for her through the school system's English as a Second Language Office.

The IEP team considered information from the student's parent that the student was successful with virtual learning during the 2019-2020 school year, but that she was unable to log the student onto the computer and remain with her throughout the school day to assist her to access virtual learning during the current school year due to "a family situation that is consuming a lot of her time." The parent did not know how long the family situation would last, and expressed the desire for the student to return to participation in synchronous learning as soon as possible.

The IEP team decided to work around the parent's schedule until family matters were resolved, scheduling therapy sessions when the parent is available and recording academic lessons that can be accessed when the parent was available.

The IEP team considered information from the parent that virtual physical therapy was not working well for the student and requested in-person physical therapy in the home and an adaptive chair for use in the home.

The IEP team discussed that the student and her parent had been provided with videos to demonstrate physical therapy positions. The team discussed that the student had recently received an adaptive wheelchair to provide proper postural support. The team discussed that the wheelchair has a tray for holding instructional materials and the Chromebook that was provided in order to access instruction. The physical therapist recommended that the student be provided with out of chair positioning every two (2) hours to prevent skin breakdown. The student's parent reported that the student was becoming too heavy for her to transfer the student in an out of the chair. The team rejected the request for in-person therapy in the home due to health and safety concerns related to the COVID-19 pandemic.

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August 9, 2021

Page 20

35. The parent contact log reflects that, following the September 10, 2020 IEP team meeting, the school staff attempted to provide special education services to the student, but that the student was not consistently logged onto the computer to receive the services. The log reflects that the student's parent was provided with email links and text messages reminding her of scheduled sessions, that the school staff attempted to contact the parent by telephone with a Spanish language interpreter to determine why the student was not participating, but did not receive a response.
36. The parent contact log reflects that, on September 25, 2020, the school staff reached out to the complainant to determine why the student was not participating. The complainant reported that the parent was discouraged that instruction was only provided in English on September 17, 2020, and requested that the school staff inform the parent of when interpreters will be available so that arrangements can be made for the student to be logged on at those times. The complainant further reported that the parent's internet "has been temporarily disconnected as of this afternoon and that she is working on solving this issue and hopes to participate regularly moving forward as she continues to deal with her sensitive family matters."
37. The parent contact log reflects that, on September 30, 2020, the student was logged onto the computer for classroom instruction. However, the student was not consistently logged on for services and the student's parent cancelled several sessions because the student had medical appointments.
38. The parent contact log reflects that, on October 15, 2020, the school staff contacted the parent by telephone to ascertain whether the student would be logged onto the computer for instruction that day. The parent indicated that the student could be logged on, but would be lying down. The school staff indicated that it would be better if the student were placed in a chair, and the parent reported there was not enough space in the room for a chair.
39. The parent contact log includes a notation, dated November 9, 2020, that the student's parent had not yet provided her signature permitting the student to begin in-person instruction that started in November 2020.
40. The parent contact log reflects that, on November 13, 2020, the student's parent reported that while she wished for the student to return to school for in-person instruction, she was unable to obtain a nurse.
41. The parent contact log reflects that, on December 7, 2020, the student's parent informed the school staff that the student was unable to attend in-person services because the bus did not show to pick her up. The school staff contacted the transportation staff, who provided assurance that the bus would arrive the next day, which the school staff shared with the student's parent. The school staff offered to provide virtual learning that day, but the parent did not respond.
42. The parent contact log reflects that, on December 8, 2020, the bus arrived to pick the student up but the student did not show. The school staff contacted the student's parent by telephone and provided information on when virtual instruction would be made available. The student's parent indicated that she could not ensure that the student would be available for virtual learning "because of what is going on in the house." The student's parent indicated that she believed that the class schedule was

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Ms. Trinell Bowman  
Dr. Jeff Gladhill  
Ms. Bonnie L. Walston

August 9, 2021

Page 21

provided only in English, and the school staff indicated that it was also sent in Spanish. The school staff resent the schedule again and asked the parent to review.

43. The parent contact log reflects that, on December 15, 2020, the student's parent and the school staff again reviewed the class schedule. However, the student was not logged onto the computer for services that day.

#### December 18, 2020 IEP Team Meeting

44. On December 18, 2020, the IEP team reconvened to consider the parent's concerns about the coordination of school, transportation, and nursing services since the initiation of hybrid learning through virtual and in-person instruction in the school building at the beginning of November, 2020. The IEP and written summary of the meeting reflect the following:

The IEP team decided that the home-school communication system would be revised to require daily contact between the parent and the school staff, that interpreter services would be provided for communication with transportation and nursing services staff, and that the school staff would assist the parent to address any questions or concerns about the provision of transportation and nursing services.

The IEP team documented that, while the student continued to participate in virtual learning, she was absent 34 out of 61 days, and that she was counted as present if she attended a therapy session even if she did not participate in classroom instruction.

The team documented that, while the student had not had the use of the supine stander during virtual learning, she was now demonstrating some gross motor skills, such as rolling to her side from her back, into the four (4) month range, and others, such as rolling from prone to supine, in the five (5) month range. The team also documented that the student's ability to lift her head had "greatly improved" over the past year, and that she demonstrated "noted improvement" in the ability to hold her head in an erect position. The team revised the annual goals based on reports of the student's progress.

45. The parent contact log documents that, following the December 18, 2020 IEP team meeting, the student continued to not be logged onto the computer for virtual learning consistently and that she was not showing up for in-person instruction in the school building. The school staff documented on January 27, 2021 that when they reached out to the parent, she informed them that the student would not return to in-person instruction until updated doctor's orders were obtained, and that she was not consistently able to log the student onto the computer for virtual learning because she is working.

#### February 3, 2021 IEP Team Meeting

46. On February 3, 2021, the IEP team convened to address the parent's concerns about the student's safety on the bus and in the school building. The IEP and written summary of the meeting reflect the following:

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August 9, 2021  
Page 22

The student's parent reported that on January 11, 2021, the student's G-tube malfunctioned at school and expressed her concern that the student did not receive her breakfast feed on that day. The school staff reported that the nurse had fixed the G-tube and that the student was able to be fed.

The student's parent reported that on January 11, 2021, the student did not arrive to school on time because the bus driver became lost trying to locate the student's home and the parent was unable to communicate with the driver due to the language barrier. The team discussed that the nursing agency has a Spanish translator on staff.

The student's parent expressed concern that the student was traveling for too long a period of time on the bus and that sitting too long aggravates the student's bowels. She requested that the student be removed from her wheelchair more frequently and for the school staff to recognize gesture cues indicating her need to have a bowel movement. She reported that she was obtaining updated medical orders and wanted to ensure that all staff are informed of them to ensure that the student can receive instruction in the school building in a safe manner. She indicated that as soon as she obtained the updated medical orders, she would provide them to the school staff.

47. The parent contact log documents that, following the February 3, 2021 IEP team meeting, the student continued to not be consistently logged onto the computer for virtual learning. When the school staff reached out to her on February 24, 2021 asking if she required a change in scheduling of sessions, she indicated that her work schedule does not allow her to log the student onto the computer for virtual learning and the family member supervising the student does not know how to work with the student to access virtual learning. The school staff offered to train the family member. However, the student has not been logged onto the computer, and the parent has not responded to subsequent efforts by the school staff to discuss the matter further.
48. The parent contact log documents that, on March 25, 2021, the school staff reached the parent by telephone and requested to have a staff member meet with her at her house to have her sign nursing orders and a consent form and asked if there was anything they could do to assist with access to instruction. The parent indicated that she did not need any support and would be available the following day to meet with the school staff.
49. The reports of the student's progress towards achievement of the annual IEP goals made during the 2020-2021 school year state that the student is not making sufficient progress on the goals.
50. On May 20, 2021, the IEP team convened and discussed that the nursing issues had been resolved and decided that the amount of instruction offered in the school building will be increased from two (2) to four (4) days per week. The team also discussed that transportation was being re-routed for the student as a result of a recent move by the family to another address.

## **CONCLUSIONS:**

### **Addressing Technology and Language Barrier Needs at the Start of Virtual Learning**

In this case, the complainant alleges that there was a delay in providing the student with an assistive technology device needed to access virtual learning from March 30, 2020 until April 23, 2020, and then a

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Ms. Trinell Bowman  
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August 9, 2021  
Page 23

further delay in the student's ability to access virtual learning because the device was not configured into Spanish.

Based on the Findings of Facts #22 - #29, the MSDE finds that there is documentation that the school system provided assistance to the parent of Student [REDACTED] without delay once her need for an assistive technology device was identified in April 2020, in accordance with 34 CFR §§300.101 and .323. Based on those Findings of Facts, the MSDE further finds that the school system provided English language interpreter services to the parent during this time period as well. Therefore, this office does not find that a violation with respect to this aspect of Allegation #5.

#### Addressing Physical Therapy Needs through Virtual Learning

The complainant also alleges that the student's parent has not been provided with the adaptive equipment necessary for the student to fully address her physical therapy needs.

Based on the Findings of Facts #24, #32, #34, #38, and #44, the MSDE finds that, while the school system provided equipment to the student in the home and consultation to the parent, the student's physical therapy needs were not addressed through virtual learning, in accordance with 34 CFR §§300.101 and .323. Therefore, this office finds that a violation with respect to this aspect of Allegation #5.

Notwithstanding the violation, based on the Findings of Facts #25 - #45, the MSDE finds that appropriate attempts were made to address the student's physical therapy needs during virtual learning, but that it was not possible to do so. Therefore, the MSDE does not require school-based corrective action to remediate the violation.

#### Addressing Access to Virtual Learning at the Start of the 2020-2021 School Year

The complainant further alleges that there was a one week delay in providing the student with access to virtual learning from the start of the 2020-2021 school year until October 7, 2020 because there were no Spanish interpreter services available to assist the parent with logging the student onto the computer, the parent's internet was disconnected, and she required technical assistance to connect to the internet using the mobile hotspot that was provided.

Based on the Finding of Fact #36, the MSDE finds that there is documentation that the parent was discouraged because instruction was provided only in English and not Spanish on September 17, 2020 and that the family's internet service was disrupted on September 25, 2020.

However, based on the Findings of Facts #32 - #45, the MSDE finds that there is documentation that a Spanish interpreter was available at the start of the school year and that numerous efforts were made to convince the parent to assist the student with logging onto the computer. Based on these Findings of Facts, the MSDE finds that the student did not consistently access virtual learning due to there not being anyone available in the home to assist her with logging onto the computer, in accordance with 34 CFR §§300.101 and .323. Therefore, this office does not find a violation with respect to this aspect of Allegation #5.

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Ms. Trinell Bowman  
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Ms. Bonnie L. Walston

August 9, 2021  
Page 24

#### Addressing Needs at the Resumption of In-person Learning

In addition, the complainant alleges that when the school reopened for in-person instruction in November 2020, the student was not consistently provided with transportation and nursing services to enable her to attend school, and that she had to miss instruction when she was hospitalized for surgical replacement of her G-tube.

Based on the Finding of Fact #46, the MSDE finds that while there is documentation that the student's G-tube malfunctioned at school on January 11, 2021, it reflects that the problem was resolved and the student remained at school. Based on that Finding of Fact, the MSDE finds that there is no documentation that any loss of instruction due to the student's need for hospitalization was the result of a lack of an offer of a FAPE by the school system.

Based on the Findings of Facts #41 and #42, the MSDE further finds that the student was unable to attend school on December 7, 2020 due to lack of transportation services in accordance with 34 CFR §§300.101 and .323. Therefore, this office finds that a violation occurred with respect to this aspect of Allegation #5.

Based on the Findings of Facts #39 and #40, the MSDE finds that there is documentation that nursing services were not available as soon as in-person instruction was offered at the start of November 2020 and the parent provided written permission for her to return to in-person instruction, in accordance with 34 CFR §§300.101 and .323. Therefore, this office finds that a violation occurred with respect to this aspect of Allegation #5.

Notwithstanding the violations, based on the Findings of Facts #44, #45, #46, #48, and #50, the MSDE finds that the school system took appropriate steps to obtain nursing and transportation services. Therefore, no school-based corrective action is required to remediate the violations.

#### Addressing Access to Virtual Learning Since December 2020

Finally, the complainant alleges that the student has not been able to access virtual learning since December 2020 because the parent is no longer able to assist her with accessing the instruction due to her work schedule.

Based on the Findings of Facts #44 - #50, the MSDE finds that after the issues with nursing and transportation services were resolved, the parent discontinued sending the student to school for in-person learning due to concerns about the student's medical needs. Based on those Findings of Facts, the MSDE further finds that the school staff have continued to offer virtual learning offered to train and provide Spanish language interpreter services the individual responsible for the student during the school day to ensure access to virtual learning for student [REDACTED] in accordance with 34 CFR §§300.101, .320, .323, and .324. Therefore, this office does not find that a violation occurred with respect to this aspect of Allegation #5.



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August 9, 2021  
Page 25

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## ALLEGATIONS #6 - #11

## BALTIMORE COUNTY PUBLIC SCHOOLS (BCPS)

### Student [REDACTED] and Addressing the Loss of a FAPE

#### FINDINGS OF FACTS:

51. The Student, [REDACTED] is twelve (12) 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. He has been placed by the BCPS at [REDACTED] ([REDACTED]) a nonpublic separate special education school, where he attended school until the March 2020 closure of school buildings and initiation of virtual learning as a result of the COVID-19 pandemic. He currently receives educational services in the school building and through virtual learning.
52. On April 8, 2020, the IEP team conducted the annual review of the IEP. The IEP that was revised required the provision of one-to-one support to work with the student to increase his functional, academic, communication, and behavioral skills to improve upon his independence in the school setting. The IEP requires that this support be faded once the student demonstrated a seventy-five percent (75%) reduction in aggression, self-injurious behavior, falling to the floor, leaving his location, and non-compliance.
53. On June 12, 2020, reports of the student's progress towards achievement of the annual IEP goals were made. The reports state that the parents had declined virtual learning citing "demands in the home including increased workload and a family member with Covid-19." The reports state that the teacher was contacting the parents on a monthly basis to continue to offer the services.
54. On September 17, 2020, the IEP team convened and considered information from the parent that she was not able to assist the student with logging onto the computer due to her full-time work. However, she also reported that she has had to bring the student in the car to see the school to keep his routine. The parent further reported that she was in the middle of a divorce, that the student was awake all night and sleeping during the day, and that the only other adult in the home did not speak English, was not computer literate, and had to watch the student's siblings.
55. The documentation of the September 17, 2020 IEP team meeting reflects that the team offered training and directions for the caregiver in her native language, an assistive technology device, training on the device, virtual one-to-one support, work packets, videos to assist in completing the packets, a library of videos, teacher recorded lessons and activities, frequent opportunities for movement and breaks, and related service provider support. The occupational therapist reported that they had had "great success engaging students with similar profiles" in virtual teletherapy. The behavioral specialist provided strategies for the parent to motivate the student. The parent indicated that this may assist the student in accessing services, but that what was being proposed was "overwhelming." The complainant stated that the only way to provide a FAPE was to provide services to the student in the home.
56. The reports of progress made by the student towards achievement of the annual IEP goals, made on October 30, 2020 and January 28, 2021, state that the parent had not accepted virtual learning and therefore, the goals were not addressed.

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August 9, 2021  
Page 26

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57. On March 25, 2021, the IEP team convened. The documentation of the meeting reflects that the team discussed that since February 2021, the student had been receiving some instruction in the school building, and was also being provided with support from a tutor in the home. The team discussed that the student was participating in virtual learning more consistently and “has shown quick progress in his goal areas.” The occupational therapist reported that “it does not appear based on the data that there was a loss of skills” in that area. The complainant asked about the student’s behaviors in school, and the school staff reported that he “grabs, pulls shirts, attempts to bite.” The complainant requested that the IEP not require physical transport or seclusion as a result of these behaviors, and the IEP team agreed.
58. The documentation of the March 25, 2021 IEP team meeting also reflects that the complainant “asked about compensatory services from March 2020.” It states that “the team discussed BCPS recovery program rollout as well as the potential for organizing a meeting to discuss compensatory services when the timeline solidifies.”

### **DISCUSSION/CONCLUSIONS:**

In this case, the complainant alleges that the student has not been able to access virtual learning because the adult who provides supervision to him in the home is unable to ensure that he logs onto the computer due to lack of English and computer literacy.

Based on the Findings of Facts #51 - #56, the MSDE finds that the student’s parent refused services that were offered by the school system to assist the student with accessing virtual learning and that there is no documentation that the student would not have benefitted from virtual learning if the services that were offered had been accepted, in accordance with 34 CFR §§300.101, .320, .323, and .324. Therefore, this office does not find that a violation occurred with respect to Allegation #6.

The complainant further alleges that, while the school system began providing the student with support in the home for accessing virtual learning in February 2021, it has refused to consider the impact of the loss of educational services to the student or any BCPS student as a result of the provision of virtual learning.

Based on the Findings of Facts #57 and #58, the MSDE finds that the documentation reflects that the BCPS is working on a plan to provide students with additional services to recover from losses experienced during virtual learning unrelated to consideration of compensatory services for students for whom a FAPE was not offered. The MSDE further finds that, because there was no lack of an offer of a FAPE in this case, the team’s decision to consider those services at a later date does not amount to a denial of consideration of those services for any denial of a FAPE to student [REDACTED] in the future.

### **Student [REDACTED] and FAPE for Students with Speech/Language Needs**

### **FINDINGS OF FACTS:**

59. The Student, [REDACTED] is twenty (20) years old and is identified as a student with Multiple Disabilities under the IDEA, including an Intellectual Disability and Other Health Impairment related to a

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August 9, 2021  
Page 27

seizure disorder. He has an IEP that requires the provision of special education and related services.

60. The student attended the [REDACTED] a public separate special education school, until the March 2020 closure of school buildings and initiation of virtual learning due to the COVID-19 pandemic.
61. Prior to the initiation of virtual learning, the student's IEP included goals to improve functional reading and math skills, communication skills, vocational skills, fine motor skills, behavioral functioning, and to increase participation in physical education by increasing on task behavior. The IEP reflects that the student is nonverbal and that the goal to increase communication skills required the student to place a picture of a preferred item located on a picture book into someone's hand when the preferred item is placed within his view in order to exchange the picture for the preferred item. The IEP required the provision of special education instruction and related services, including speech/language services, to assist him in achieving the goals.
62. The parent contact log reflects that, on April 2, 2020, the school staff began attempting to set up a time to discuss with the student's parent how services would be provided virtually. The log reflects that the school staff and the parent discussed the matter on April 7 and 14, 2020.
63. On April 14, 2020, the school system staff provided the parent with a proposed amendment to the IEP for virtual learning that indicated that special education instruction would be provided through weekly classroom Google Meets sessions and supplemental online materials and that related service would be provided through consultation from the service providers. The email to the parent stated "Please respond as to whether you agree or disagree with these proposed changes. Please note that if you disagree, BCPS will honor your request to not provide services at this time." However, it also stated "If you have any questions or concerns about the proposed changes, please contact [the IEP Chairperson]" and provided contact information for this staff member.
64. There is an email, dated April 14, 2020, which reflects that the parent spoke with the school staff about the amendment and that the parent was waiting for the school staff to send another version of the amendment for her review.
65. On April 14, 2020, the complainant sent an email to the IEP Chairperson at the school indicating that the school system is not permitted to unilaterally determine the services to be provided.
66. On April 16, 2020, the IEP Chairperson at the school responded to the complainant as follows:

Thank you for your message. We look forward to working with you to develop a plan. Parent input is essential to the development of the amendment, as it is with any IEP process.
67. There is an email, dated April 21, 2020, from the school staff to the complainant and the parent, asking them to inform him if they wished to have the IEP team convened to consider the proposed IEP amendment.

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August 9, 2021  
Page 28

68. There is an email, dated May 12, 2020, from the school staff to the parent and the complainant, providing an updated IEP amendment for their review, and reminding them of the right to request an IEP team meeting to discuss the proposed amendment.
69. There is no documentation that the BCPS either obtained the parent's agreement to the amended IEP or convened the IEP team to consider the proposed changes.
70. The parent contact log and emails between the parent and the school staff reflect that on April 8, 16, 17, 20, 22, 24, 27, 28, and 30, 2020, and May 1, 4, 6, 8, and 11, 2020, the school staff contacted the parent to provide information on the class schedule and ask whether she required assistance with the technology as the student had not been participating in the virtual learning being offered. The log reflects that on May 12, 2020, the student logged onto the virtual classroom.
71. The reports made of the student's progress towards achievement of the annual IEP goals made in June 2020 reflect the following:
- Multiple attempts were made by the speech/language therapist to contact the family through email, telephone, and the virtual learning platform to attempt to provide consultative speech/language services without success. The student "minimally attended scheduled classroom Google Meets, therefore, limited to no progress" was made on the goal to improve communication skills.
- The student participated in only half of the virtual instruction offered to address the academic and vocational/community/transition goals. During group sessions, the student's attention was not focused on the lessons. As a result, the student's progress was not measureable.
- The student made sufficient progress towards achievement of the goal to improve fine motor skills with the provision of consultative services from the occupational therapist.
- The student made sufficient progress towards achievement of the goal to improve behavior. The student's behavior was observed to be "appropriate" and he was not observed to engage in inappropriate touch or loud banging/hand clapping while in front of his computer.
- The goal to increase participation in the physical education setting was not addressed due to the lack of access to such a setting.
72. The reports made of the student's progress towards achievement of the annual IEP goals made in July 2020 during the provision of Extended School Year (ESY) services reflect that the student was, by that time, "very engaged" in the virtual instruction. However, the report on the vocational/community/transition goal states that, while the student attended almost every session offered the goal could not be meaningfully addressed through virtual learning and there is no documentation that the IEP team considered whether the goal could be revised for virtual learning or that the parties agreed to amend the IEP to address the goal through virtual learning.
73. The student's virtual weekly schedule for the 2020-2021 school year, service logs, and emails between the speech/language therapist and the parent document that at the start of the school year,

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August 9, 2021  
Page 29

direct speech/language services were provided virtually, but that previously, they were provided on a consultative basis.

74. There is no documentation that direct speech/language services were provided to any BCPS student from March 2020 through the end of the 2019-2020 school year or that revisions were made to these services through either an IEP team or agreement to amend the IEP.
75. In November 2020, reports were made of the student's progress towards achievement of the annual IEP goals. The reports reflect the student was making sufficient progress on all but the adaptive physical education goal, and notes that he was only present for one half of the scheduled sessions in that area. The reports reflect that the student's progress on the vocational/community/transition goal was being measured differently than described in the IEP to reflect the change in how the goal was being addressed virtually.
76. On November 24, 2020, the IEP team convened. The documentation of the meeting reflects that the team revised the goals based on the reports of the student's progress. The team further decided that the speech/language therapist would provide the family with strategies and suggestions on how to use equipment at home to work on improvement of speech sounds and that updated assessments would be conducted in order to complete a reevaluation.
77. On February 19, 2021, the IEP team convened to complete the reevaluation. The documentation of the meeting reflects that the complainant asked why the assessments recommended in November 2020 had not been completed face-to-face instead of virtually, and the school staff responded that several requests were made to the parent to obtain consent to conduct them in that manner, but that they did not receive consent. Both the parent and the evaluator reported that conducting the evaluation virtually did not impact the validity of the results.
78. The documentation of the February 19, 2020 IEP team meeting states the following:

The short-term objectives within the community/vocational/transition goal were revised between the first (1<sup>st</sup>) and second (2<sup>nd</sup>) quarter to ensure the goal could be addressed virtually;

While the student made "great progress" toward the academic goals, they were not yet achieved.

The student was making progress towards achievement of the communication goal, but that not all of the objectives within the goal could be addressed through virtual learning.

The occupational therapist reported that the student has established sessions throughout the week where he is expected to wear a face mask. She further reported that, due to late arrivals at session and absences on dates and times scheduled for mask wear, the student was only able to tolerate a face mask on average nineteen (19) minutes per session.

The student was not making sufficient progress on the adapted physical education goal due to lack of attendance in virtual Adaptive Physical Education classes, but that the school staff would continue to attempt to encourage increased attendance.

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Mr. Philip Lynch  
Ms. Trinell Bowman  
Dr. Jeff Gladhill  
Ms. Bonnie L. Walston

August 9, 2021  
Page 30

79. The documentation of the February 19, 2021 IEP team meeting reflects that the complainant asked why the student had not been considered for return to the school building for the provision of instruction. The school staff responded that emails were sent to both the complainant and the parent requesting the parent's permission for this, and that no response was received. The parent pointed out that she previously expressed a preference for telephone calls as a means of communication and the school staff acknowledged this. The complainant and parent requested that a private provider to consult with the team on the development of the IEP and the team agreed.
80. There is an email, dated April 12, 2021, from the school staff to the parent asking whether she had connected with the private provider so that the IEP team could complete the IEP review.
81. On May 20, 2021, the IEP team reconvened. The team documented that after several attempts to find a convenient date for the school staff to consult with the student's private provider on the IEP, the meeting took place on April 29, 2021. At the May 20, 2021 IEP team meeting, the parent expressed concern that the amount of speech services required by the IEP had not been provided during virtual learning. The speech/language therapist disagreed, and reported that she has documentation that speech/language services were provided as required by the IEP. The speech/language therapist opined that the student should not continue to be provided with speech/language therapy in a separate special education classroom because best practice in speech pathology involves having a student generalize the skills worked in therapy in the classroom.
82. At the May 20, 2021 IEP team meeting, the student's private provider opined that, because the student had not mastered the annual IEP goals, he requires five (5) years of compensatory services. The school-based members of the team disagreed with the private provider. The parent agreed with the private provider and reported that, although the student had made progress, it was because she had been assisting him. The parent indicated that she does not believe that the IEP can be implemented in a public separate special education school and the school staff disagreed.
83. The documentation of the May 20, 2021 IEP team meeting states that the parent requested that the goals not be revised until she obtains additional private assessments. The team continued its review of the goals and the school staff assured the parent that the goals could be reviewed again based on the assessment results. The documentation of the meeting states that the student's private provider and the complainant "interrupted the goal review process, indicating that it was not worthwhile because the IEP, in general, is fundamentally flawed." The documentation reflects that they indicated that the student's needs are not appropriately identified in the present levels of performance, and thus, the IEP does not address the needs. It states that the complainant reported that "the team can choose to finalize the IEP and then deal with the consequences."
84. On June 21, 2021, the IEP team reconvened and reviewed and revised the IEP. However, the documentation of the meeting reflects that the parent and her advocates do not agree with the school-based members' positions that the IEP is appropriate, and that they will be providing additional private assessment data for the team to consider. The documentation of the meeting also reflects that the BCPS has currently awarded the student 200 hours of compensatory services and that additional hours were being calculated.

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Dr. Jeff Gladhill  
Ms. Bonnie L. Walston

August 9, 2021  
Page 31

## **DISCUSSION/CONCLUSIONS:**

In this case, the complainant alleges that, due to the nature of the student's disability, he has been unable to access virtual learning, and that the BCPS has not addressed the lack of access.

Based on the Findings of Facts #59 - #84, the MSDE finds that the documentation does not support the allegation.

However, based on the Findings of Facts #72 and #75, the MSDE finds that the BCPS did not ensure that the community/vocational/transition goal was revised so that it could be addressed virtually from March 2020 until after the first (1<sup>st</sup>) quarter of the 2020-2021 school year, in accordance with 34 CFR §§300.101, .320, .323, and .324. In addition, based on those Findings of Facts, the MSDE finds that there is no documentation that the BCPS followed proper procedures to revise the goal through agreement with the parent or through an IEP team, in accordance with 34 CFR §300.324.

In addition, based on the Findings of Facts #61 - #69, #73, and #74, the MSDE finds that the BCPS unilaterally changed the speech/language services from direct to consultative from March 2020 through the end of the 2019-2020 school year, in accordance with 34 CFR §300.324. Therefore, this office finds that violations occurred with respect to Allegation #7.

The complainant also alleges that the BCPS has offered consultative speech/language services instead of direct speech/language therapy to all students with speech/language needs without considering whether the individual students' needs can be addressed in this manner.

Based on the Finding of Fact #74 the MSDE finds that there is no documentation that the BCPS provided direct speech/language therapy to any students or that revisions were made to these services through either an IEP team or agreement to amend the IEP for any student from March 30, 2020 until the end of the 2019-2020 school year, in accordance with 34 CFR §§300.101, .320, .323, and .324. Therefore, this office finds that a violation occurred with respect to Allegation #10.

Notwithstanding the violations found with respect to Student [REDACTED] based on the Findings of Facts #81 - #84, the MSDE finds that the BCPS has ensured that steps are being taken to provide compensatory services to the student. Therefore, no additional student-specific corrective action is required.

## **Student [REDACTED] and Addressing the Loss of a FAPE**

## **FINDINGS OF FACTS:**

85. The Student [REDACTED] is eleven (11) years old and is identified with Multiple Disabilities under the IDEA, including an Intellectual Disability and an Orthopedic Impairment. The student has an IEP that requires the provision of special education and related services.
86. The student attended [REDACTED] a public separate special education school, until the closure of school buildings in March 2020 and initiation of virtual learning due to the COVID-19 pandemic. The student is now receiving instruction in the school building five (5) days per week.

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Ms. Trinell Bowman  
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Ms. Bonnie L. Walston

August 9, 2021  
Page 32

87. The IEP in effect prior to the initiation of virtual learning reflects that the student displays self-injurious behavior and physical aggression towards others when he is denied something, wants attention when he sees a peer getting attention, and wants to avoid a non-preferred activity. The IEP included goals for the student to improve communication, behavior, self-help/adaptive, and functional math and reading skills.
88. The IEP included a Behavioral Intervention Plan (BIP) to provide positive behavioral interventions and supports, and it required the provision of thirty (30) hours of special education instruction per week using alternate education standards, and speech/language therapy to assist him with achieving the goals. It also required the provision of supplementary aids and services including the use of multi-sensory instruction, picture cues, physical and verbal memory cues, and monitoring of motor skills.
89. The education record contains an amendment to the IEP, dated April 6, 2020, which states that during the period of virtual learning, the student would be provided with thirty (30) minutes of classroom instruction twice per week and three (3) fifteen (15) minute sessions per day in order to address the IEP goals. It states that consultation would be provided to the parent by an occupational therapist, physical therapist, and speech/language therapist.
90. The April 6, 2020 IEP document states that behavior intervention staff would also be available to provide consultation to the parent on the provision of behavioral supports during virtual learning. The document further states that the family does not have a computer or printer, and that this may impact the student's ability to access materials electronically since he requires physical documents to be placed in front of him. The document states that it constitutes the education services that can be provided as close as possible to the requirements of the IEP. It further states that compensatory services will be considered for the student upon the return to services in the school building.
91. On April 16, 2020, the IEP team met and decided that the student requires the provision of an assistive technology device to access services from his teacher and related service providers. The IEP revised on April 16, 2020 includes the same goals as the IEP in effect prior to the initiation of virtual learning.
92. The BCPS acknowledges that the student was not provided with an assistive technology device to access services until May 4, 2020 due to the lack of availability of such a device in its inventory until that time.
93. The speech/language therapist's service logs reflect that since May 2020, the "consultation" provided includes working directly with the student in addition to working with his parent and teacher.
94. On August 10 and 20, 2020, the IEP team convened and considered information from the parent that virtual learning was not working well for the student. The parent reported that she was having difficulty getting the student to work on the computer and was unable to sit with the student throughout the school day. The complainant requested that some in-person instruction begin for the student and the parent indicated that the student may be able to access virtual learning with someone supporting him in the home. The school staff reported that the student had achieved some



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Ms. Bonnie L. Walston

August 9, 2021  
Page 33

of his goals and made sufficient progress on the remaining goals. The school staff reported that the student demonstrated less aggressive behavior during virtual learning than when instruction was provided in the school building because he does not have to compete with other students for attention.

95. The written summary of the IEP team meeting completed on August 20, 2020 states that the team proposed increasing the amount of special education instruction to three (3) hours per day of instruction and “possible additional 1:1 sessions: related services, etc.” on four (4) days per week and parent coaching and “possible 1:1 individual sessions” on a fifth (5<sup>th</sup>) day per week.
96. The documentation of the IEP team meeting completed on August 20, 2020 reflects that the student’s parent indicated that she is unable to continue to support the student with the increased amount of virtual instruction being proposed. The IEP team responded that the parent would have to identify a responsible caregiver to supervise the student in the home and that training and coaching could be provided to any caregiver with responsibility for supervising the student. The IEP team also decided that virtual lessons could be videotaped for the student to view when he is available to access instruction. The team discussed strategies to maintain the student’s focus on instruction and decided that a computer monitor with straps could be provided to secure it to a desk or table to prevent the student from closing the laptop, and send some visual supports home.
97. On September 23, 2020, the IEP team reconvened and considered information from the student’s parent that she was surprised by the fact that the student was participating in virtual learning, but that it takes a lot of effort to get him to participate. The parent reported that the student’s behaviors escalate during unstructured times such as breaks in instruction. Based on that information, the team revised the Behavioral Intervention Plan (BIP) to address the student’s behavior.
98. On October 14, 2020, the IEP team reconvened to consider the parent’s concern that the student was unable to access virtual learning independently. The school staff reported that the student made progress toward or achieved IEP goals and had demonstrated less aggressive and self-injurious behavior during virtual learning. The team discussed that the family had been provided with a big screen monitor attached to his computer to prevent him from closing his device in early September 2020, but that the parent reported that it was not working. The school staff offered to reconfigure the device and the parent agreed to bring it into the school to have it reconfigured, but indicated that she did not think it would address the student’s behavior.
99. The documentation of the October 14, 2020 IEP team meeting reflects that the parent and complainant requested in-person support in the home to assist the student with participating in virtual learning. The team rejected the request for in-person services because there was not enough time to determine whether the revised BIP interventions were effective.
100. On December 4, 2020, the parties entered into a mediated agreement for the student to be provided with in-home support, with training on the use of behavioral interventions, for virtual learning. While efforts were made by the BCPS to obtain a provider, the BCPS was not able to obtain a service provider until February 1, 2021, and this individual was unable to begin providing the services until February 15, 2021 due to having contracted COVID-19.

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Ms. Bonnie L. Walston

August 9, 2021  
Page 34

101. On March 1, 2021, the IEP team convened and considered information that the student had only received support in the home for eleven (11) days, and thus, there was not sufficient information to determine the effectiveness of the support. The team discussed that some instruction in the school building would begin on March 4, 2021, and decided that the support staff should continue to work with the student both in the home and in the school building, and that a fade plan would be developed to reduce the adult support.
102. On April 6, 2021, the IEP team reconvened and considered information from the student's parent that virtual learning was not working for the student, even with adult support in the home. The team discussed that the school system was opening school buildings for in-person instruction four (4) days per week and the decided that the student would now receive instruction in the school building on four (4) days and virtual on one (1) day per week. The team decided to continue providing the support staff in the school and in the home.
103. On May 5 and 13, 2021, the IEP team conducted an annual IEP review. The documentation of the meeting reflects that the student was at that time receiving services in the school building five (5) days per week. The team considered results of an educational assessment and discussed that the student had made "huge progress" since the last assessment conducted three (3) years previously. However, the team decided that the student is owed compensatory services for the loss of a FAPE during virtual learning. The complainant requested that the services be provided in the summer of 2021, and a member of the school staff responded that he would contact the BCPS Office of Special Education to find out how to proceed.
104. On June 7, 2021, the IEP team reconvened and began discussing the compensatory services to be provided to the student.
105. An email, dated July 6, 2021, from the school staff to the parent and complainant, states "I have still not received a response from the Department of Special Education regarding our discussion on June 7<sup>th</sup>. I have been told that the system will be providing training and guidance on compensatory services. I will reach out to you when I receive more information."

### **DISCUSSION/CONCLUSIONS:**

In this case, the complainant alleges that the BCPS has not addressed all of the student's IEP goals through virtual learning, and thus, has not ensured that the IEP meets the student's identified needs.

Based on the Findings of Facts #85 - #103, the MSDE finds that the IEP in effect since the initiation of virtual learning has addressed all areas of identified needs for Student [REDACTED] in accordance with 34 CFR §§300.101, .320, .323, and .324. Therefore, this office does not find that a violation occurred with respect to this aspect of Allegation #8.

The complainant also alleges that the BCPS has not addressed the student's lack of access to virtual learning.

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Ms. Trinell Bowman  
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August 9, 2021  
Page 35

Based on the Findings of Facts #90 - #92, the MSDE finds that the BCPS did not ensure that the Student [REDACTED] had access to virtual learning as a result of not having the required technology device from March 30, 2020 to May 4, 2020, in accordance with 34 CFR §§300.101, .320, .323, and .324.

Based on the Findings of Facts #90 and #94 - #104, the MSDE finds that the student was not able to access a FAPE through virtual learning, in accordance with 34 CFR §§300.101, .320, .323, and .324. Therefore, this office finds that a violation occurred with respect to this aspect of Allegation #8.

Notwithstanding the violation, based on the Findings of Facts #90 and #94 - #104, the MSDE finds that the IEP team met throughout the period of virtual learning and attempted to address the student's behavioral needs, but that the student could not be provided with a FAPE through virtual learning. Therefore, no school-based corrective action is required.

The complainant further alleges that the BCPS is not ensuring that the identified loss of a FAPE to students with disabilities is being remediated.

Based on the Findings of Facts #81 - #84, and #103 - #105, the MSDE finds that, while IEP teams are beginning to make some decisions about compensatory services where there is an identified loss of a FAPE, the IEP team for Student [REDACTED] has not been provided with guidance that it has the obligation to complete this process without delay, in accordance with 34 CFR §§300.101, .320, .323, and .324. Therefore, this office finds a violation with respect to Allegation #11.

**Student [REDACTED]**

## **FINDINGS OF FACTS:**

106. The Student [REDACTED] is seven (7) years old and is identified as a student with Autism under the IDEA. The student has an IEP that requires special education and related services. He attended [REDACTED] until the March 2020 closure of school buildings and initiation of virtual learning due to the COVID-19 pandemic.
107. The IEP in effect prior to the COVID-19 pandemic documents that the student had a history of not consistently attending school, which impacted his academic progress. The IEP includes a statement by the parent that the student had missed school due to his need to attend a feeding clinic, school refusal, and her concerns about his safety due to injuries sustained at school. The documentation of the IEP team meeting at which the IEP was developed reflects that the parent reported that the student had gained approximately twenty (20) vocabulary words as a result of the provision of private Applied Behavioral Analysis (ABA)<sup>1</sup> therapy in the home. However, the teacher reported that the student's levels of performance in the area of literacy remained the same. The parent

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<sup>1</sup> ABA is a specific instructional methodology that focuses on improving specific behaviors, such as social skills, communication, reading, and academics, as well as adaptive learning skills, such as fine motor dexterity and grooming (<https://www.psychologytoday.com>).

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Dr. Jeff Gladhill  
Ms. Bonnie L. Walston

August 9, 2021  
Page 36

requested a “1:1 assistant to provide the rich attention and motivation he needs to support his progress.” Based on teacher reports that, when the student attended school, he was participating and responding with “very little prompting,” the IEP team decided that the student would be provided with additional adult support in the classroom and during transitions within the school building.

108. On October 29, 2019, the IEP team met at the parent’s request to consider recommendations by the student’s private psychologist to provide the student with visual supports. The student’s teacher reported that, at that time, the student “quickly learned classroom routines and is now completing many with minimal adult assistance.” The student’s parent reported that the student was no longer yelling when he was required to get on the bus to go to school, but that she was not willing to assist with getting him on and off the bus with his backpack. The complainant stated that the team had “one week to make this better or they are requesting a new aid.” The team decided that the student would be provided with a rolling backpack and assistance getting on and off of the bus, as well as other supports such as a quieter place to eat and increased prompting to drink water. The team also agreed to use the same visual supports in school as was being used by the private psychologist.
109. There are Student Service Logs, which reflect that since the initiation of virtual learning as a result of the closure of school buildings in March 2020 due to the COVID-19 pandemic, the teacher regularly checked in with the parent through email in English and Spanish (her native language) with reminders of the class schedule and strategies to support the student, and requests that the parent inform her of the preferred method of communication, the best time of the day to reach her, and information about any other way the school staff could support the parent. The parent responded on May 28, 2020, apologizing for not having been responsive to earlier attempts to reach her, and explaining that she was experiencing some “personal struggles.” The logs reflect that the student did not regularly participate in the online sessions, and that recordings of the lessons and PowerPoints were made available to the student.
110. The reports of the student’s progress towards achievement of the annual IEP goals reflect that he made sufficient progress during the 2019-2020 school year.
111. On August 25, 2020, the IEP team convened and considered the parent’s concern that she was not able to monitor or support the student throughout the day during virtual learning as she was expected another child and needed rest and was unable to find anyone else to support him. The parent also reported that the student was having more difficulty focusing and engaging in his lessons as well as during the ABA therapy. The parent and the complainant requested that the school system place providers in the home for face-to-face instruction and one-to-one support for redirection and assistance maintaining attention and engagement in instruction. They reported that the virtual learning did not work the previous school year and would not work for the upcoming school year. The team rejected the request based on restrictions on providing face-to-face services, and the parties agreed to attempt mediation to resolve the dispute.
112. On October 13, 2020, the complainant filed a due process complaint alleging that the BCPS had not provided the student with a FAPE since March 2020. The due process complaint states that the student’s parent requested “face-to-face instruction, placement in a nonpublic setting that is providing face-to-face-instruction, or contracted service providers to provide support in the home

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Ms. Trinell Bowman  
Dr. Jeff Gladhill  
Ms. Bonnie L. Walston

August 9, 2021  
Page 37

during virtual learning,” and that the proposed remedy was the provision of educational services in the home to ensure IEP implementation.

113. A teacher report, dated October 15, 2020, reflects that, while the student “faced some challenges” with virtual learning at the beginning of the school year, the school staff were observing less refusals, aggression, and crying/screaming.” The report reflects that a registered behavior technician works with student during instruction, using full physical, partial physical, gestural and model prompting to support the student, and that he was engaging in the lessons.
114. On November 9, 2020, the parties reached an agreement settling the due process complaint. The settlement agreement requires the BCPS “to fund the provision of in-home educational services to the Student for IEP implementation” for forty-five (45) days, to convene the IEP team to determine whether the amount of in-home services should be increased if the student is benefitting from the services, and for the school system to pay the parent’s attorney fees and education-related costs. The agreement permits the parent to make a claim of a loss of a FAPE and request compensatory services at a later date as a result of school building closures due to the pandemic.
115. A teacher report, dated March 10, 2021, reflects that, since January 2021, the student had been provided with support in the home from two (2) aides. The report states that “although [the student] has faced challenges with transitions, he has done exceptionally well adjusting and learning the routines of our sessions.”
116. There are emails among the school staff and between the school staff and the parent, in English and Spanish, that document that the parent was offered participation in a Parent Workshop to support families during virtual learning. They reflect that the workshops were held at night and focused on helping parents understand the prompt hierarchy, wait time, positive reinforcement, sensory/movement breaks, and self-regulation strategies. They further reflect that the in-home aide had regular contact with the student’s teacher and registered behavior technician on the techniques for increasing the student’s attention and class participation and was implementing all of the IEP supports designed for that purpose.
117. On March 10, 2021, the IEP team convened and considered the parent’s report that the student was not being sufficiently motivated with the support of the aide placed in the home by the BCPS, but that the student was motivated when working with the ABA therapist. The team discussed that student was able to return to the school building for in-person instruction, but the parent rejected the offer.

### **DISCUSSION/CONCLUSIONS:**

In this case, the complainant alleges that the BCPS has not ensured that the IEP team has addressed the Student [REDACTED] lack of access to virtual learning because it has not provided all instruction and supports in the student’s home.

Based on the Findings of Facts #106 - #118, the MSDE finds that the BCPS has ensured that the IEP team has taken appropriate steps to address the lack of access to virtual learning for Student [REDACTED] since March

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August 9, 2021  
Page 38

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30, 2020, in accordance with 34 CFR §§300.101, .320, .323, and .324. Therefore, this office does not find that a violation occurred with respect to Allegation #9.

## **ALLEGATION #12**

## **CALVERT COUNTY PUBLIC SCHOOLS (CCPS)**

### **FINDINGS OF FACTS:**

118. The Student [REDACTED] is nine (9) years old, and has been identified as a student with Multiple Disabilities under the IDEA, including a Specific Learning Disability and an Other Health Impairment related to a diagnosis of Attention Deficit Hyperactivity Disorder (ADHD) since February 8, 2021. He has an IEP that requires the provision of special education instruction.
119. The student attended the [REDACTED] until the Statewide closure of school buildings in March 2020 and the initiation of virtual learning due to the COVID-19 pandemic. He is currently receiving some instruction in the school building as well as virtual instruction.
120. On April 30, 2020, the student was identified as a student with a disability under Section 504 of the Rehabilitation Act of 1973, and an Accommodations Plan (504 Plan) was developed after the parent provided the school staff with a note from the student's private physician, written on a prescription pad, stating "[The student] is diagnosed with Attention Deficit and Hyperactivity Disorder (ADHD) so please start 504 Plan with IEP meeting."
121. On January 15, 2021, the student's parent made a written referral for an IDEA evaluation, providing a copy of the report of a private neuropsychological evaluation, dated November 11, 2020.
122. On February 8, 2021, the IEP team considered the results of the private neuropsychological evaluation, which indicated that the student has a cognitive ability in the "very low/borderline range at the fifth (5<sup>th</sup>) percentile" and was functioning two (2) levels below grade level in reading, written language, and math. The team also considered information from the student's parent and teacher that the student "demonstrates significant levels of inattention, social impairment, and aggression and defiance" and that he "struggles with changes in routine and academics" and had not completed any assignments during the year. Based on the evaluation results, the IEP team identified the student as a student with a disability under the IDEA.
123. On March 8, 2021, the IEP team developed the IEP. The documentation of the meeting reflects that the student had participated in intensive reading interventions for two (2) years. The current reading interventionist reported that the student was "doing well and moving through" one intervention program "with no difficulty," and that she had recently decided to use a different intervention. The documentation reflects that, the student had participated in a math intervention, but had not been logging onto the computerized math intervention during virtual learning. The school staff reported that the student had been returning to the school building for some instruction and that he was shown how to log onto the online learning platform, and had demonstrated the ability to do so independently.

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Ms. Trinell Bowman  
Dr. Jeff Gladhill  
Ms. Bonnie L. Walston

August 9, 2021  
Page 39

124. The student's parents reported that the student had difficulty logging onto on-line instruction and that they were unable to sit with him to provide assistance with doing so. They expressed concern that the student struggled with reading and math for several years, and that despite informing the school staff at the start of the 2020-2021 school year that he was having difficulty accessing virtual learning, the student was not provided with assistance and the research-based reading intervention was not offered during the current school year until November 6, 2020.
125. The CCPS has a process in place to provide students with academic and behavioral supports in the general education program if the student is not suspected of being a student with a disability under the IDEA. This process requires that a Student Support Team (SST) convene to develop individual student goals and implement strategies to be provided within the general education program to assist students with meeting those goals. If a student does not meet an expected goal, the SST determines whether additional interventions in the general education program are appropriate, or whether a referral should be made for the student to a 504 or IEP team for evaluation.
126. There is no documentation that the student's progress with supports in the general education program through the 504 Plan was monitored to ensure that they remained appropriate to address his educational needs or whether an IDEA evaluation was conducted between April 30, 2020 and January 15, 2021.

## **CONCLUSIONS:**

In this case, the complainant alleges that the CCPS did not follow proper procedures to begin an IDEA evaluation when interventions in the general education program were not successful for the student.

Based on the Findings of Facts #118 - #126, the MSDE finds that the CCPS did not ensure that the Student [REDACTED] was evaluated and identified as a student with a disability under the IDEA from April 30, 2020 to January 15, 2021, in accordance with 34 CFR §§300.111, .301, and COMAR 13A.05.01.06. Therefore, this office finds that a violation occurred with respect to Allegation #12.

## **ALLEGATION #13**

## **CARROLL COUNTY PUBLIC SCHOOLS**

## **FINDINGS OF FACTS:**

127. The student [REDACTED] is eleven (11) years old and is identified with Multiple Disabilities under the IDEA, including Autism, Intellectual Disability, and Other Health Impairment related to Attention Deficit Hyperactivity Disorder. He has an IEP that requires the provision of special education and related services.
128. The student attended the [REDACTED] until the Statewide closure of school buildings in March 2020 and the initiation of virtual learning due to the COVID-19 pandemic. Since December 2020, the student has been receiving instruction both virtually and at [REDACTED] School.
129. The IEP team for the student convened on June 2, 2020 and September 1, 2020. The documentation of those IEP team meetings reflects that the team discussed that it had been difficult

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Ms. Trinell Bowman  
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Ms. Bonnie L. Walston

August 9, 2021  
Page 40

to engage the student in virtual learning, and that he had become increasingly resistant to participating despite strategies and supports attempted by the parent and school staff. The documentation reflects that the student “requires extensive, direct, repeated and individualized instruction and substantial supports” due to his Intellectual Disability and that the team noted that the student “would only benefit from face-to-face services.” However, the IEP team rejected the parent’s request for a return to face-to-face instruction in the school building or reimbursement for private community-based services due to health and safety concerns as a result of the pandemic.

130. On November 2, 2020, the IEP team reconvened. The documentation of the meeting reflects that, by that time, the student had been returned to the school building for instruction for two (2) days per week. At the meeting, the parent requested that all services be provided face-to-face in the school building, which was rejected by the team. The school-based members of the team explained that the school system was still in the process of expanding the opening of school buildings in a manner that ensures the health and safety of the students returned to the buildings, and that compensatory services will be provided to the student once he is returned to the building for all instruction and data can be obtained on the impact of virtual learning on his ability to benefit from the education program.
131. On November 23, 2020, the complainant requested mediation on behalf of the parent to resolve the dispute about whether a FAPE was provided since the Spring 2020.
132. On December 4, 2020, the parties entered into a mediation agreement, which resolved the dispute. According to the agreement, the Carroll County Public Schools was to place the student at [REDACTED] School until his assigned school, [REDACTED] re-opens for at least four (4) days per week of in-person instruction. The agreement required the parent to provide transportation to [REDACTED] School until Carroll County Public Schools could complete arrangements and specified that the parent maintains the right to pursue recovery/compensatory education services. It also required the IEP team to consider the student’s progress the week of February 22, 2021.
133. On February 23, 2021, the IEP team reconvened. The documentation of the IEP team meeting reflects that the team considered information about the student’s progress since receiving instruction at [REDACTED]. At the meeting the school staff expressed concern about the large number of data points required to be collected to measure achievement of the annual goals. Based on the school staff’s concerns, the team decided to schedule the annual review to occur prior to one year from the last annual review in June 2021 to consider revising the way progress is measured.
134. On April 28, 2021, the IEP team conducted the annual IEP review. At the meeting, the team discussed that the student was making progress since attending [REDACTED]. The student’s parent requested that the student remain placed at [REDACTED] for the remainder of the 2020-2021 school year because a transition to the student’s assigned school at the end of the year could have a negative impact on the progress he made since being placed at the school in December 2020. Although the team acknowledged that [REDACTED] is not the Least Restrictive Environment (LRE) in which the IEP can be implemented, it decided that this was outweighed by the need to ensure that the progress the student has made in all



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August 9, 2021  
Page 41

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areas is not upset by a change in placement at this time. Therefore, the IEP team agreed that the student will remain placed at [REDACTED] for the remainder of the 2020-2021 school year. The IEP team also decided to review data on the student's progress and to make recommendations for recovery/compensatory at the end of the 2020-2021 school year.

135. There is a PWN from an IEP team meeting held on June 8, 2021 that documents that the IEP team determined the recovery/compensatory services needed for the student.

### **CONCLUSIONS:**

In this case, the complainant alleges that the Carroll County Public Schools did not ensure that the student was able to access virtual learning.

Based on the Findings of Facts #127 - #134, the MSDE finds that the Carroll County Public Schools took steps to address the lack of access to virtual learning for Student [REDACTED] from March 30, 2020 to December 2020, when it began providing services to the student in the school building, in accordance with 34 CFR §§300.101, .320, .323, and .324. Therefore, this office does not find that a violation occurred with respect to this aspect of Allegation #13.

The complainant also alleges that the Carroll County Public Schools has not ensured that the identified loss of a FAPE for the student will be remediated.

Based on the Findings of Facts #134 and #135, the MSDE finds that the Carroll County Public Schools has ensured that any loss of a FAPE to Student [REDACTED] will be remediated in accordance with 34 CFR §§300.101, .320, .323, and .324. Therefore, this office does not find that a violation occurred with respect to this aspect of Allegation #13.

### **ALLEGATIONS #14 AND #15      CECIL COUNTY PUBLIC SCHOOL SYSTEM (CCPSS)**

### **FINDINGS OF FACTS:**

136. The Student [REDACTED] is fourteen (14) years old and is identified as a student with a Specific Learning Disability in written language and reading that impacts reading phonics and written language expression. He has an IEP that requires the provision of special education and related services.
137. The student attended the [REDACTED] until the Statewide closure of school buildings in March 2020 and the initiation of virtual learning due to the COVID-19 pandemic. He has been assigned to [REDACTED] since the start of the 2020-2021 school year.
138. The IEP in effect prior to the initiation of virtual learning, dated October 15, 2019, required that the student be provided with thirty (30) minutes per week of special education instruction to address reading and thirty (30) minutes per week of special education instruction to address written language expression in the general education classroom. It also required four (4) forty (40) minute sessions of special education instruction per week to address phonics and decoding in a separate special education classroom. The IEP did not require the support of an adult aide in the classroom or participation in a research-based writing intervention. It did require 4

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Ms. Trinell Bowman  
Dr. Jeff Gladhill  
Ms. Bonnie L. Walston

August 9, 2021  
Page 42

sessions of twenty (20) minutes per week of speech/language therapy as a related service to address weakness in speech articulation.

139. There is an email from the CCPSS Associate Superintendent for Education Services to CCPSS principals, dated April 1, 2020, which reflects that the principals were directed to “ensure that, to the greatest extent possible, each student with a disability can be provided with the special education and related services identified in the student’s IEP.”
140. There is an email from the staff of another CCPSS school to the parent of another CCPSS student, dated April 1, 2020, which states:

Due to the COVID-19 school closure, the method and time allotted for instruction for all students have been altered. The continuous learning opportunities are about 30% of what students typically receive during the school week. In alignment with the general education instruction, we need to collaborate with you on the distance learning instruction related to IEP goals that can be provided to your child during the closure.
141. There is an email from the school staff to the named student’s parent, dated April 2, 2020, providing a proposal for the amount and frequency of instruction to be provided to address the student’s IEP goals.
142. There is an email from the parent to the school staff, dated April 16, 2020, indicating that the parent did not agree to the proposed amount and frequency of services. The parent stated that the school staff informed her by telephone that they were “instructed by the state or superintendent to give 30% of the services a student was getting in school.” The parent further stated “I understand that a individualized plan is supposed to be determined. I do not think they said 30%. I do not think what you are offering is enough for [the student], especially for speech and phonics.”
143. On April 16, 2020, the school staff responded to the parent explaining that the special education instruction would be provided on a one-to-one basis for writing and that it would also address the reading goal, and asking the parent for her availability to discuss the services by telephone. The school staff also indicated that she would contact the speech/language service provider to express the parent’s concern about the amount of speech/language services being proposed.
144. On April 21, 2020, the parent responded to the school staff that she would be available to discuss the services on April 23, 2020.
145. On April 30, 2020, the parent wrote to the school staff documenting that they discussed the parent’s concerns about the amount of services being proposed and how the school staff proposed addressing them. These proposals included the school staff speaking to the student’s teachers about increasing the amount of special education instruction to be provided to address the reading and writing goals. The email reflects that the parent was in agreement with speech/language therapy being provided on a weekly basis.
146. On May 8, 2020, the IEP team met to address the parent’s concerns about the provision of services during the period of virtual learning. The documentation of the meeting reflects the agreement of

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Mr. Philip Lynch  
Ms. Trinell Bowman  
Dr. Jeff Gladhill  
Ms. Bonnie L. Walston

August 9, 2021  
Page 43

the parties to the provision of weekly speech/language services and weekly sessions with the teacher to address the written language goal. The documentation reflects that the team discussed that the student had been provided with a reading intervention and completed the program, testing “out of level C which is middle school level.” The team discussed that the student was also receiving support from his teacher to address the reading phonics goal, and that his last session “he scored 63/64 correct.” The team considered information from the parent that the student was receiving private tutoring in a reading program and her request that he be provided with similar instruction at school. The team decided to give the student a placement test for a similar reading program to determine whether it was appropriate, that the parent would provide data from the private tutoring, and that it would reconvene to consider the data.

147. On May 29, 2020, the IEP team considered data regarding the student’s assessment for the reading program and decided that the student would be provided with the reading intervention.
148. On September 17, 2020, the IEP team conducted a reevaluation. The documentation of the meeting reflects that the IEP team decided that the student continues to meet the criteria for identification as a student with a disability and that additional data was not required. The IEP team discussed that the student had been participating in virtual learning, and that he “struggled a bit but has reached out to his teachers for help and has scheduled time to work with them during office hours in order to get extra assistance.” The IEP team further discussed that the student “has medical issues and has a doctor’s note stating that it is not safe for him to return to school until a vaccine for Covid has been developed and administered.” However, there is no documentation that the parent has requested Home and Hospital Teaching (HHT) services for the student.
149. The reports of the student’s progress towards achievement of the goal to improve speech articulation, made during the 2019-2020 school year reflect that he made sufficient progress towards achievement of the goal. The progress report made on October 22, 2020 states that the student had achieved the goal, and that his speech was “95 – 100% intelligible.” The report states that, over the course of the year, the student “demonstrated an increased ability to self-monitor, noted by self-correction of errors as they occur” and that the student reported that he feels that his speech articulation no longer impacts his education.
150. When the IEP team reviewed and revised the IEP at an annual review on November 13, 2020, it decided that, based on the data, the student no longer has needs in the area of speech articulation.
151. The reports of the student’s progress towards achievement of the goal to improve written language expression, made during the 2019-2020 school year reflect that he made sufficient progress towards achievement of the goal. The progress report made on October 22, 2020 states that the student had achieved the goal. The reports of the student’s progress towards achievement of the goals to improve reading reflect that they were achieved by the time date of the November 13, 2020 IEP review. The reading and written language goals and services were revised on November 13, 2020 based on the reported progress.
152. The reports of the student’s progress towards achievement of the annual IEP goals made since January 27, 2021 state that the student is not making sufficient progress towards achievement of the annual IEP goals due to his lack of participation in virtual learning. The parent contact log and

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August 9, 2021  
Page 44

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Ms. Rebecca Miller

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emails between the parent and teachers document that the school staff have regularly attempted to convince the student to participate, but have been unsuccessful. However, there is no documentation that the IEP team convened to address the student's interfering behavior.

153. There is a letter from the CCPSS Special Education Department to school staff, dated March 25, 2021, which documents that the school staff have been directed to consider whether each student with a disability requires recovery services as a result of the closure of school buildings and provision of virtual learning. The letter provides the school staff with guidance for individualized decision-making based on progress data collected since the closure of school buildings.

## **CONCLUSIONS:**

### **Allegation #14 Offer of a FAPE**

In this case, the complainant alleges that the CCPSS has a practice of providing all students with disabilities with thirty percent (30%) of their IEP services without making an individualized decision about each student's needs.

Based on the Findings of Facts #139 - #150, the MSDE finds that the CCPSS does not have a practice of providing all students with thirty percent (30%) of their IEP services without making an individualized decision about each student's needs, in accordance with 34 CFR §§300.101, .320, .323, and .324. Therefore, this office does not find that a violation occurred with respect to Allegation #14.

### **Allegation #15 Student [REDACTED]**

In this case, the complainant alleges that the student's IEP was amended for virtual learning in a manner that was not designed to ensure that he could continue to address the annual IEP goals by reducing the amount of services to be provided.

Based on the Findings of Facts #136 - #138, #143, and #145 - #150, the MSDE finds that the IEP in effect for Student [REDACTED] has provided sufficient services for the student to make progress and achieve the annual IEP goals, in accordance with 34 CFR §§300.101, .320, .323, and .324. Therefore, this office does not find that a violation occurred with respect to this aspect of Allegation #15.

The complainant further alleges that the student has not been able to access special education instruction through virtual learning since December 2020, and that the CCPSS has not addressed this lack of access.

Based on the Findings of Facts #146 and #148 - #151, the MSDE finds that there is no documentation that the student has been unable to access virtual learning and that the school system has a process in place for addressing the need for compensatory/recovery services needed by students as a result of virtual learning.

However, based on the Finding of Fact #152, the MSDE finds that the CCPSS has not ensured that the IEP team has addressed the student's interfering behavior of refusing to participate in virtual learning since January 27, 2021, in accordance with 34 CFR §300.324. Therefore, this office finds that a violation occurred with respect to this aspect of Allegation #15 since January 27, 2021.

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Ms. Bobbi Pedrick  
August 9, 2021  
Page 45

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**ALLEGATIONS #16 - #18**

**HARFORD COUNTY PUBLIC SCHOOLS (HCPS)**

**FINDINGS OF FACTS:**

154. The Student [REDACTED] is thirteen (13) 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.

155. The student has had the following educational placements since March 2020:

- The student attended [REDACTED] until the Statewide closure of school buildings in March 2020 and the initiation of virtual learning due to the COVID-19 pandemic.
- On June 4, 2020, the IEP team determined that the student requires a change in educational placement and placed him in a regional therapeutic behavioral support program at [REDACTED]
- The student began receiving some instruction in the school building on October 19, 2020.
- On May 20, 2021, the IEP team decided that the Least Restrictive Environment (LRE) in which the IEP can be implemented is a nonpublic separate special education school and the school system is making applications to schools. The student is currently receiving services in the school building at [REDACTED] and through virtual learning.

156. Prior to the COVID-19 pandemic and the initiation of virtual learning, the following occurred:

- On December 19, 2019, the IEP team decided that the student, who was previously identified with an Emotional Disability, meets the criteria for identification as a student with Autism. The decision was based on data that the student was demonstrating significant behavior more indicative of Autism. These behaviors, which were demonstrated in school and at home, included disruptive, intrusive, threatening behavior to others, poor social skills and difficulty communicating, becoming easily upset and frustrated in response to environmental changes and changes in routine, and difficulty overcoming stress and adversity.
- On February 13, 2020, the IEP team considered information that the student was demonstrating “a significant increase in explosive and interfering behaviors within the school setting.” The team determined additional supports and strategies to be provided and recommended an updated Functional Behavioral Assessment (FBA), speech/language assessment, observation by an occupational therapist.
- From February 24, 2020 through March 13, 2020, the student was psychiatrically hospitalized.

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Dr. Terri Savage  
Mr. Philip Lynch  
Ms. Trinell Bowman  
Dr. Jeff Gladhill  
Ms. Bonnie L. Walston

August 9, 2021  
Page 46

157. On March 16, 2020, school buildings were closed and virtual learning initiated due to the COVID-19 pandemic.
158. The reports made of the student's progress towards achievement of the annual IEP goals, made on April 9, 2020, document that several supports were provided during the previous quarter to assist the student with accessing instruction, but that he was not consistently available for learning due to his emotional functioning.
159. On April 21, 2020, the IEP team met and discussed that the student was not accessing virtual learning due to his interfering behavior and that the assessments recommended had not been conducted. The team decided to explore options for conducting the assessments virtually and the school staff offered to conduct virtual meetings with the student, but his parent indicated that this would be too difficult for the student. The team added supports to address the behavior and decided to reconvene with participation by HCPS Central Office staff to consider the student's educational placement.
160. On June 4, 2020, the IEP team reconvened with HCPS Central Office staff and added more supports to address the student's interfering behavior. The team decided that the LRE in which the IEP can be implemented with the provision of supplementary aids and supports is a separate special education classroom and that the IEP would be implemented in a regional therapeutic behavioral support program located at [REDACTED]. The documentation of the meeting indicates that at that time, the student was again psychiatrically hospitalized.
161. The progress reports made on July 30, 2020 reflect that the student was accessing virtual learning and making sufficient progress towards achievement of the annual goals during the provision of Extended School Year (ESY) services.
162. The progress reports made on November 6, 2020 reflect that the student continued to participate in virtual learning and also began receiving instruction in the school building on October 19, 2020.
163. By the time progress was again reported on January 22, 2021, the student had become "extremely non-compliant," "physically aggressive at home," and was refusing to participate in class and complete work.
164. On March 1, 2021, the IEP team considered information that the student had exhibited physical aggression in the school building "throwing items, laptops, threatening to damage classroom materials." The documentation of the meeting reflects that the team decided that more supports would be provided to address the student's interfering behavior. The parent's attorney reported that the student "would have received lock-door seclusion during his hospitalization, which is not available in the public school settings," and requested that the educational placement be changed to a nonpublic separate special education school. The team decided to reconvene with participation by HCPS Central Office staff to consider the student's educational placement.
165. On April 22, 2021 and May 20, 2021, the IEP team reconvened and considered information that the student was not regularly attending class or participating when he does attend and was in "constant crisis mode" both at home and in the school building. The parent reported that the student's

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Ms. Bobbi Pedrick  
August 9, 2021  
Page 47

Ms. Diane McGowan  
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Dr. Kathy Pierandozzi  
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Ms. Rebecca Miller

Mr. Michael Thatcher  
Dr. Terri Savage  
Mr. Philip Lynch  
Ms. Trinell Bowman  
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behaviors at home are “drastically impeding his academic progress.” The school staff reported that the student was frequently exhibiting behavior in the school building such as ripping posters off the walls, throwing items, breaking things, and refusing to follow staff directions or meet academic demands. The parent reported that the student had broken her nose and that she has had to contact the County Mobile Crisis Unit several times to address his aggressive behavior and requested a residential placement. The school staff reported that the team had previously agreed to investigate supports that could be provided in the student’s home, but that the parent was not interested due to past negative experiences when the student was removed from the home by the local Department of Social Services and placed at Villa Maria.

166. At the May 20, 2021 IEP team meeting, the team decided that the LRE in which the IEP can be implemented is a nonpublic separate special education school and the parent agreed to a referral to community-based services in the home. The team documented that the assessments recommended on February 13, 2020 had not been completed as a result of delays that occurred when school buildings were closed and when the student was unavailable due to hospitalization. The team decided that the student was not stable enough to complete the assessment and that any assessments conducted would not be a valid representation of the student’s ability and skills. It decided that the BIP would be updated with anecdotal information and that it will reconvene in forty-five (45) days to allow the student to acclimate and stabilize in a new educational environment in order to consider the student’s progress and the need for assessment data. The team also decided that the student would be provided with additional counseling to address recovery of social, emotional skills impacted by the COVID-19 pandemic.

## **CONCLUSIONS:**

### **Allegation #16 Student [REDACTED] – Access to Virtual Learning**

In this case, the complainant alleges that the HCPS has not ensured that the IEP team has addressed the lack of access to virtual learning for the student.

Based on the Findings of Facts #154 - #166, the MSDE finds that the Student [REDACTED] has been unavailable for virtual learning or instruction in the school building due to his emotional instability.

Based on those Findings of Facts, the MSDE further finds that the HCPS ensured that the IEP team has reviewed and revised the IEP to address the student’s emotional needs, in accordance with 34 CFR §§300.101, .320, .323, and .324. Therefore, this office does not find that a violation occurred with respect to Allegation #16.

### **Allegation #17 Student [REDACTED] – Reevaluation Timeline**

In this case, the complainant alleges that the HCPS has not ensured that recommended assessment have been conducted and the results considered by the IEP team.

Based on the Findings of Facts #156 and #160 - #166, the MSDE finds that the HCPS did not ensure that assessments recommended by the IEP team for Student [REDACTED] have been conducted and the results

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Ms. Rebecca Miller

Mr. Michael Thatcher  
Dr. Terri Savage  
Mr. Philip Lynch  
Ms. Trinell Bowman  
Dr. Jeff Gladhill  
Ms. Bonnie L. Walston

August 9, 2021  
Page 48

considered by the IEP team since March 30, 2020, in accordance with COMAR 13A.05.01.06. Therefore, this office finds a violation with respect to Allegation #17.

Notwithstanding the violation, based on the Findings of Facts #160 - #166, the MSDE finds that the student has been unavailable for assessments. Therefore, no corrective action is required.

### **Allegation #18      Student [REDACTED] – Educational Placement**

In this case, the complainant alleges that the HCPS has not ensured that the IEP team addressed the parental concern for a change in educational placement for the student.

Based on the Findings of Facts #159, #160, and #164 - #166, the MSDE finds that the HCPS has ensured that the IEP team addressed the parental concern for the need for a change in educational placement for Student [REDACTED] since March 1, 2021, in accordance with 34 CFR §§300.114 - .116 and .324. Therefore, this office does not find that a violation occurred with respect to Allegation #18.

### **ALLEGATIONS #19 AND #20      HOWARD COUNTY PUBLIC SCHOOL SYSTEM (HCPSS)**

**Student [REDACTED]**

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

167. The Student [REDACTED] is nine (9) 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.
168. The student attended [REDACTED] until the Statewide closure of school buildings in March 2020 and the initiation of virtual learning due to the COVID-19 pandemic. During the 2020-2021 school year, the student began receiving instruction in the school building and virtually.
169. The documentation of IEP team meetings held on May 19, 2020, June 11 and 12, 2020, July 28, 2020, August 19, 2020, and September 9, 2020, indicates that the IEP team has attempted to address the student's difficulty accessing virtual learning.
170. The documentation of the August 19, 2020 IEP team meeting reflects that the complainant reported that the parent has had to work directly with the student to keep her engaged in virtual learning, and expressed the belief that the parent should not be required to do so. The school system staff reported that the school system was exploring options for additional support for students requiring it for virtual learning, and the team decided to reconvene once additional resources were identified.
171. The documentation of the September 9, 2020 IEP team meeting reflects that, at that meeting, the parent reported that she had to assist the student during virtual instruction to make sure the student did not log off of the computer. The IEP team discussed that the student was not able to access the behavioral supports required by the education program through virtual learning, and that her behaviors were impacting her access to instruction. The IEP team decided that the student cannot make sufficient progress through virtual learning without being provided with one-to-one adult support in the home. The school system staff reported that the school system was not permitting



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Ms. Tacha Marshall  
Megan Berger, Esq.  
Leslie Seid Margolis, Esq.  
Ms. Bobbi Pedrick  
August 9, 2021  
Page 49

Ms. Diane McGowan  
Dr. Debra Y. Brooks  
Dr. Kathy Pierandozzi  
Ms. Christina Harris  
Mr. Nicolas Shockney  
Ms. Rebecca Miller

Mr. Michael Thatcher  
Dr. Terri Savage  
Mr. Philip Lynch  
Ms. Trinell Bowman  
Dr. Jeff Gladhill  
Ms. Bonnie L. Walston

HCPSS employees to enter students' homes at that time so that an outside contractor would be explored.

172. The HCPSS acknowledges that the student is unable to make sufficient progress through virtual learning without one-to-one support in the home, and that this service has not yet been provided. The HCPSS proposes to convene the IEP team to determine the amount and nature of compensatory services to remediate the loss of a FAPE during the period of virtual learning.
173. There are emails between the parent and the school system staff, dated from September 21, 2020 to December 13, 2020, that reflect that, while the school system has made several efforts to contract with a private vendor to provide this service in the student's home, and has also offered to pay for a private provider identified by the parent, but the parties have been unable to identify a provider.
174. While the student is now receiving instruction in the school building four (4) days per week, she continues to receive virtual instruction for one (1) day per week without the one-to-one support required, and there is no documentation that the IEP team has determined compensatory services for the loss of behavior supports during virtual learning.

## **CONCLUSIONS:**

In this case, the complainant alleges that the HCPSS has not addressed the student's inability to access virtual learning.

Based on the Findings of Facts #167 - #174, the MSDE finds that the Student [REDACTED] has not been provided with a FAPE since March 30, 2020, in accordance with 34 CFR §§300.101, .320, .323, and .324. Therefore, this office finds that a violation occurred with respect to this aspect of Allegation #19.

Notwithstanding the violation, based on the Findings of Facts #167 - #174, the MSDE finds that the HCPSS has ensured that the IEP team took appropriate steps to address the lack of access to virtual learning for student [REDACTED] since March 30, 2020, but that the student is unable to receive a FAPE through virtual learning. Therefore, no school-based corrective action is required to remediate this violation.

The complainant also alleges that the HCPSS has not ensured that the identified loss of a FAPE for the student will be remediated.

Based on the Finding of Fact #174, the MSDE finds that the HCPSS has not ensured that the IEP team has determined how to remediate the identified loss of a FAPE for Student [REDACTED] in accordance with 34 CFR §§300.101, .320, .323, and .324. Therefore, this office finds that a violation occurred with respect to this aspect of Allegation #19.

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Ms. Tacha Marshall  
Megan Berger, Esq.  
Leslie Seid Margolis, Esq.  
Ms. Bobbi Pedrick  
August 9, 2021  
Page 50

Ms. Diane McGowan  
Dr. Debra Y. Brooks  
Dr. Kathy Pierandozzi  
Ms. Christina Harris  
Mr. Nicolas Shockney  
Ms. Rebecca Miller

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Dr. Terri Savage  
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**Student** [REDACTED]

### **FINDINGS OF FACTS:**

175. The student is eight (8) years old, and is identified as a student with Autism under the IDEA. He has an IEP that requires the provision of special education and related services.
176. The student attended [REDACTED] a public separate special education school until the Statewide closure of school buildings in March 2020 and the initiation of virtual learning due to the COVID-19 pandemic. During the 2020-2021 school year, the school system began offering instruction through a combination of services in the school building and virtually.
177. The documentation of IEP team meetings held on September 30, 2020, November 20, 2020, and December 23, 2020, indicates that the IEP team has attempted to address the student's difficulty accessing virtual learning.
178. The documentation of the December 23, 2020 IEP team meeting reflects that the IEP team decided that, while the student had made progress and improved his reading and math skills during virtual learning, his behavioral needs could not be addressed during virtual learning without one-to-one support in the home.
179. While the school system has made several efforts to contract with a private vendor to provide this service in the student's home, and has also offered to pay for a private provider identified by the parent, but the parties have been unable to identify a provider.
180. The HCPSS acknowledges that the student is unable to make sufficient progress through virtual learning without one-to-one support in the home, and that this service has not yet been provided. The HCPSS proposes to convene the IEP team to determine the amount and nature of compensatory services to remediate the loss of a FAPE during the period of virtual learning.

### **CONCLUSIONS:**

In this case, the complainant alleges that the HCPSS has not addressed the student's lack of access to virtual learning.

Based on the Findings of Facts #175 - #180, the MSDE finds that the Student [REDACTED] has not been provided with a FAPE since March 30, 2020, in accordance with 34 CFR §§300.101, .320, .323, and .324. Therefore, this office finds that a violation occurred with respect to Allegation #20.

Notwithstanding the violation, based on the Findings of Facts #175 - #180, the MSDE finds that the HCPSS ensured that the IEP team took appropriate steps to address the lack of access to virtual learning for Student [REDACTED] but that the student cannot be provided with a FAPE through virtual learning. Therefore, no school-based corrective action is required to remediate the violation.

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August 9, 2021  
Page 51

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**ALLEGATION #21**

**MONTGOMERY COUNTY PUBLIC SCHOOLS (MCPS)**

**FINDINGS OF FACTS:**

181. The Student [REDACTED] is nine (9) years old, is identified as a student with Autism under the IDEA. He has an IEP that requires the provision of special education and related services.
182. The student attended [REDACTED] until the Statewide closure of school buildings in March 2020 and the initiation of virtual learning due to the COVID-19 pandemic. Since March 1, 2021, the student has been receiving instruction in the school building and virtually.
183. There is a Prior Written Notice (PWN) document that reflects that, on April 23, 2020, the school staff and the student's parents discussed a proposal to amend the IEP for virtual learning with the student's parents. The PWN states that the parents reported that the student's interfering self-injurious behaviors had increased they believed that the student would be unable to benefit from virtual learning and therefore, would not agree to amend the IEP.
184. There is a PWN, dated May 5, 2020, which documents that on April 28, 2020, the IEP team convened and addressed the parents' concern by adding supports such as parent counseling and training, and consultation between the parents that the psychologist, behavior support teacher, social worker, and speech/language pathologist.
185. There is a PWN, dated August 27, 2020, which documents that the parents again disagreed with the school system's proposal for amendment of the IEP for virtual learning for the 2020-2021 school year. The school system had proposed to provide parent consultation on the use of positive/concrete enforcement strategies in the home or by computer, and modeling and the facilitation of the use of assistive technology. The PWN reflects that the parents again rejected the proposal, reporting that the student has continued his physically aggressive behaviors during virtual instruction and was not paying attention to the instruction.
186. There is an IEP, dated September 3, 2020 and PWN, dated September 10, 2020, which reflect that the parents requested that education services be provided face-to-face in their home, which was rejected by the team due to the closure of school buildings for health reasons. The documents reflect that the parents requested a change in educational placement to a nonpublic separate special education school, and that the team rejected this request based on information from observations conducted by the school staff of the student participating in and attending to lessons virtually. The PWN states that the parents and their legal counsel "disregarded any information" provided by the school staff and "had no interest in the supports provided in the revised robust virtual learning plan that was established."
187. The reports of the student's progress towards achievement of the annual IEP goals reflect that, by the end of the second (2<sup>nd</sup>) quarter of the 2020-2021 school year, the student was no longer making sufficient progress towards achievement of his annual goals because he was no longer being logged onto the computer to participate in virtual learning.

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Ms. Bonnie L. Walston

August 9, 2021  
Page 52

188. On March 11, 2021, the IEP team began a reevaluation. At that time, the team discussed that the student had been receiving some instruction in the school building since March 1, 2021. The team recommended an updated Functional Behavioral Assessment (FBA), psychological, educational, occupational therapy, and speech/language assessments. The team also decided that the parents would be provided with notes each day of what the student did at school and that academic and behavioral data would be provided to them in the middle and end of each month, at the parents' request.
189. On May 17 and 19, 2021, the IEP team reviewed the assessment results and revised the IEP based on the data. The team documented that the student was arriving to school between 11:30 and 12:30 "due to significant disturbances in sleep as cited by [a] doctor's note." The team further discussed that the student suffered a loss of a FAPE during virtual learning and determined the services needed to remediate the loss. The team also decided to reconvene with participation by MCPS Central Office staff to consider a change in educational placement.

## **CONCLUSIONS:**

In this case, the complainant alleges that the MCPS has not addressed the student's inability to access virtual learning.

Based on the Findings of Facts #181 - #189, the MSDE finds that the IEP team convened and considered the parent's concerns about virtual learning, adding supports to assist the student, but that the parents have not accepted the supports offered and there is no documentation that the student would not have benefitted from virtual learning if the services that were offered had been accepted, in accordance with 34 CFR §§300.101, .320, .323, and .324. Therefore, this office does not find that a violation occurred with respect to this aspect of Allegation #21.

The complainant also alleges that the MCPS has not ensured that the identified loss of a FAPE for the student will be remediated.

Based on the Findings of Facts #181 - #189, the MSDE finds that the MCPS is following proper procedures to ensure that additional needs the student has as a result of his parents' refusal of services will be addressed, in accordance with 34 CFR §§300.101, .320, .323, and .324. Therefore, this office does not find that a violation occurred with respect to this aspect of Allegation #21.

## **ALLEGATIONS #22 - #25**

## **PRINCE GEORGE'S COUNTY PUBLIC SCHOOLS (PGCPS)**

**Student** [REDACTED]

## **FINDINGS OF FACTS:**

190. The Student [REDACTED] is fourteen (14) years old, is identified as a student with a Specific Learning Disorder under the IDEA, and has an IEP that requires the provision of special education instruction. The student attended [REDACTED] until the Statewide closure of school buildings in March 2020 due to the COVID-19 pandemic and the initiation of virtual learning. He is currently offered services virtually and in the school building.

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Ms. Trinell Bowman  
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Ms. Bonnie L. Walston

August 9, 2021  
Page 53

191. The IEP in effect prior to the initiation of virtual learning, dated November 25, 2019, identifies the student with needs in the areas of reading, written language, and math, and includes annual goals for the student to improve his skills in these areas. The IEP requires that the student be provided with four (4) hours and twenty (20) minutes of special education instruction per day to assist him with achieving the goals.
192. On April 8, 2020, the IEP was amended to discontinue the goal to improve written language skills and to decrease the amount of special education instruction to thirty (30) to forty-five (45) minutes per week without explanation of how this would continue to offer the student a FAPE. The amendment states that it “will be implemented for this student throughout the period of time in which schools are closed due to the COVID-19 Pandemic.”
193. The parent’s native language is Spanish. There is no documentation that the PWN of the amendments made to the IEP on April 8, 2020 was provided to the parent in Spanish at that time.
194. The parent contact log includes a notation from the school staff, dated April 17, 2020 that the student was not logging on to access virtual learning, and that several attempts had been made to contact the parent by telephone and text message, but there was no response.
195. On October 27, 2020, the IEP team convened and revised the IEP to once again include a goal for the student to improve written language skills and to increase special education instruction to four (4) hours and twenty (20) minutes of special education instruction per day to assist him with achieving the goals. The IEP states that the parent expressed concern that the student does not know his class schedule and has had consistent difficulty with technology in order to access instruction virtually.
196. The written summary of the October 27, 2020 IEP team meeting also documents that the student had been unable to access virtual learning due to technological issues. The document reflects that the IEP team decided that, due to the lack of access to instruction, there was no data that the student was making sufficient progress towards achievement of the annual goals. However, the summary does not reflect that the IEP team addressed the lack of access and progress. There is no documentation that the PWN of the decisions made were provided to the parent in Spanish at that time.
197. The parent contact log reflects that, on February 25, 2021, the complainant requested the IEP and written summaries of IEP team meetings in Spanish, on behalf of the parent. The contact log reflects that on March 5, 2021, those documents were provided to the complainant in English and the school staff informed the complainant that it would take four (4) weeks to have them translated and provided in Spanish. The school staff asked the complainant to advise whether to proceed with the translation. The contact log reflects that on the same date, the complainant indicated that she would get back to the school staff about having the documents translated.
198. The parent contact log reflects that, on March 5, 2021, the complainant contacted the school staff and indicated that the parent was informed that the students were being offered the opportunity to begin receiving instruction in the school building again. The complainant asked whether there were

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August 9, 2021  
Page 54

resources for the parent to learn about the options in Spanish. The school staff responded that the information was available on the school system's website in Spanish. The school staff reported that the parent was contacted by telephone regarding this information using a Spanish interpreter service. The school staff further reported that the school has front office staff who are fluent in Spanish and that she can also contact the front office by email in Spanish.

199. The parent contact log reflects that, on March 5, 2021, the school staff informed the complainant that arrangements were being made for a Spanish interpreter for the parent at the upcoming March 11, 2021 IEP team meeting.
200. On March 11, 2021, the IEP team reconvened at the request of the complainant on March 1, 2021. The parent contact log reflects that, on that date, the complainant reported that the family was struggling with "significant technology barriers." The written summary of the March 11, 2021 IEP team meeting reflects that the IEP team discussed that, in January 2021, the student's Chromebook was brought into the school and that he was provided with a new one and directions on its use, but that he and the parent still did not understand how to use the device. The IEP team decided that a date would be scheduled for the student and his parent to come back to the school for training on the use of technology to access virtual learning. The team also decided that the special education case manager would work with the student on a one-on-one basis each week and provide the student with her cell phone number to contact her directly for assistance logging onto his classes. The team further decided that supplementary aids and services would be added to the IEP to assist the student with accessing instruction, and that the school psychologist would meet with the student.
201. The parent contact log contains a notation by the school staff on March 16, 2021 that a Spanish interpreter service was used to communicate with the parent when she and the student came to the school building to receive technology support and to review the student's class schedule.
202. On April 20, 2021, the IEP team determined that the student requires ESY services and documented that one of the factors considered was that the student's "inability to access virtual learning due to technical issues and in part due to his chronic absences this school year." The team decided to revise the IEP to include incentives to encourage attendance and engagement.
203. The parent contact log reflects that, on April 29, 2021, the parent was provided with copies of the IEP amended on April 8, 2020, a January 2, 2018 report of a psychological assessment, a January 2, 2018 report of an educational assessment, and a Prior Written Notice (PWN) of the October 27, 2020 IEP team meeting. These documents were provided in Spanish and English at the request of the parent and complainant.
204. The parent contact log reflects that, on June 2, 2021, the parent was provided with copies of the April 20, 2021 IEP and PWN in English and translated into Spanish.
205. On June 8, 2021, the IEP team determined compensatory services to be provided to make up for the loss of services during virtual learning. The complainant opined that the services offered were minimal. The IEP team discussed that there was a lack of sufficient data to determine the student's current levels of performance because of his lack of regular school attendance, both virtually and in

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August 9, 2021  
Page 55

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the school building, and decided to review his progress forty-five (45) to sixty (60) days into the 2021-2022 school year. The team also discussed that a technology specialist was assigned to work with the family to assist with technology needed to access instruction.

206. The parent contact log reflects that on June 16, 2021, the school staff provided the parent with the PWN from the June 8, 2021 IEP team meeting in English and informed her that it would also be provided to her in Spanish as soon as it was translated.

## **CONCLUSIONS:**

### **Allegation #22 Addressing the Student's Needs and Access to Virtual Learning**

In this case, the complainant alleges that the PGCPS did not ensure that the IEP amended for virtual learning has addressed Student [REDACTED] needs.

Based on the Findings of Facts #190, #192, and #195, the MSDE finds that the PGCPS did not ensure that the IEP addressed the identified needs of student [REDACTED] from March 30, 2020 to October 27, 2020, in accordance with 34 CFR §§300.101, .320, .323, and .324. Therefore, this office finds that a violation occurred with respect to this aspect of Allegation #22 for this time period.

Notwithstanding the violation, based on the Finding of Fact #205, the MSDE finds that the IEP team has determined the compensatory services needed to remediate the loss of services. Therefore, no additional student-based corrective action is required to redress the violation.

The complainant also alleges that the PGCPS has not addressed the inability of Student [REDACTED] to access virtual learning and has not addressed "significant language barriers for his mother in communicating with the school."

Based on the Findings of Facts #194 and #196 - #202, the MSDE finds that, while there is documentation that the school system provided support for the parent to communicate with the school staff, the PGCPS did not ensure that the IEP team addressed the information about the difficulty experienced by student [REDACTED] in accessing virtual learning from October 27, 2020 to March 11, 2021, in accordance with 34 CFR §§300.101, .320, .323, and .324. Therefore, this office finds that a violation occurred with respect to this aspect of Allegation #22 for this time period.

Notwithstanding the violation, based on the Finding of Fact #205, the MSDE finds that the IEP team has determined the compensatory services needed to remediate the loss of services. Therefore, no additional student-based corrective action is required to redress the violation.

### **Allegation #23 Provision of IEP Documents in Native Language**

In this case, the complainant alleges that the PGCPS did not provide the parent of Student [REDACTED] with a copy of the IEP and written summaries of IEP team meetings in her native language.

Based on the Findings of Facts #197 and #203, the MSDE finds that the PGCPS provided the parent of Student [REDACTED] with a copy of the IEP amended on April 8, 2020 translated into Spanish in response to the

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August 9, 2021  
Page 56

parent's request, in accordance with Md. Code Ann., Education Article §8-405. Therefore, this office does not find a violation with respect to this aspect of the Allegation #23.

However, based on the Findings of Facts #193 and #196, the MSDE finds that the PGCPS did not provide the parent of Student [REDACTED] with a copy of the PWN of the decisions made to amend the IEP in April 2020 or to revise the IEP in October 2020 in her native language at the time those decisions were made, in accordance with 34 CFR §300.503. Therefore, this office finds that a violation occurred with respect to this aspect of Allegation #23.

Notwithstanding the violation, based on the Findings of Facts #197, #203, #204, and #206, the MSDE finds that the documents were subsequently provided to the parent upon the request of the complainant and that PWNs from subsequent IEP team meeting are being provided to the parent in her native language. Therefore, no student-specific corrective action is required to remediate the violation.

**Student** [REDACTED]

**FINDINGS OF FACTS:**

207. The Student [REDACTED] is seven (7) years old, is identified as a student with an Intellectual Disability under the IDEA, and has an IEP that requires special education and related services. She attended [REDACTED] until the Statewide closure of school buildings in March 2020 and initiation of virtual learning due to the COVID-19 pandemic. She is currently receiving services in the school building and through virtual learning.
208. There are emails among the school staff from April 2020 that document that the student "is 100% attentive whenever she is on the computer," that "she did not take off her headset at any time," and "fully cooperated without resistance." The emails reflect that the parent was only available in the evening to assist the student with logging onto the computer and that the school staff provided videos and classwork for the student to complete at night.
209. The written summary of an IEP team meeting held on September 17, 2020 states that the parent picked up a new technology device for the student to use to access virtual learning from the school.
210. The documentation of the September 17, 2020 IEP team meeting reflects that the parent provided portions of a report of an audiology assessment and indicated that the student was going to have hearing aids in the near future. The parent requested a change in educational placement for the student, and the IEP team requested the entire audiology report and consent to obtain the student's health records in order to consider the request.
211. On October 14, 2020, the parent signed acceptance of a mobile data hotspot.
212. On October 26, 2020, the student's parent provided written consent for the school staff to obtain the student's health records.
213. The reports of progress made by the student towards achievement of the annual IEP goals from November 2020 reflect that she continued to make sufficient progress towards achievement of all of the goals except for the goal to improve fine motor skills. The report of the student's progress in



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August 9, 2021  
Page 57

this area states that the student “has not been available for therapy due to difficulty with getting on line.”

214. On November 10, 2020, the IEP team convened and considered medical records from the student’s private provider indicating that large class sizes with background noise impact the student’s ability to decipher speech directed toward her. The team discussed that the student was not participating in the instruction provided during school hours because the parent’s schedule did not allow her to assist the student with logging onto the computer. The team discussed that the student was, however, working with the teacher after school hours on completing her work. The parent reported that the student was exhibiting behaviors at home, such as elopement from the house. The IEP team considered the recommendation of the student’s pediatrician to have a teacher provide instruction in the student’s home. The team rejected the request due to health and safety reasons.
215. The documentation of the November 10, 2020 IEP team meeting reflects that, at the meeting, the parent reported that the student had recently received eyeglasses, but had not yet received the hearing aids. The parent again requested a change in educational placement where instruction can be provided in smaller classes. The IEP team decided to conduct cognitive and academic assessments with the student’s hearing aids and eyeglasses in order to obtain sufficient data to consider the request for a change in educational placement. There is no documentation that the IEP team recommended a neuropsychological evaluation.
216. On January 5, 2021, the IEP team convened and discussed that, while the school staff were regularly meeting with the student after work hours, the student continued to be unavailable to participate regularly in virtual learning during school hours because there was no one in the home to assist her with logging onto the computer.
217. The documentation of the January 5, 2021 IEP team meeting reflects that the team considered information that the student had been fitted for hearing aids on November 18, 2020. The team decided that audiology consultation services would be provided along with accommodations and strategies to assist the student with understanding spoken communication and instruction.
218. The documentation of the January 5, 2021 IEP team meeting reflects that the IEP team discussed that the parent had not provided written consent for the assessments recommended in November 2020 to be conducted, and that the parent agreed to go to the school to sign the consent form.
219. On January 6, 2021, the parent provided written consent for assessments of cognitive functioning, academic performance, and functional/adaptive performance.
220. The parent contact log reflects that the parent was unable to supervise the student in the home during school hours to help her to log onto the computer for virtual learning due to the parent’s need to leave the house to go to work and to take a sibling for medical appointments. The log further reflects that the special education teacher and speech/language therapist worked consistently with the student’s parent to provide one-to-one services to the student after school hours to accommodate the parent’s schedule.

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Ms. Trinell Bowman  
Dr. Jeff Gladhill  
Ms. Bonnie L. Walston

August 9, 2021  
Page 58

221. The reports of progress made by the student towards achievement of the annual IEP goals from January 2021, February 2021, and April 2021 reflect that she continues to make sufficient progress towards achievement of all of the goals.
222. On June 2, 2021, the IEP team reviewed results of assessments and revised the IEP based on the data.

### **CONCLUSIONS:**

In this case, the complainant alleges that the PGCPSS has not addressed the lack of access to virtual learning and conducted a neuropsychological evaluation for Student [REDACTED]

Based on the Findings of Facts #207 - #222, the MSDE finds that there is no evidence that the IEP team has recommended a neuropsychological evaluation for the student.

Based on the Findings of Facts #207 - #222, the MSDE finds that the PGCPSS ensured that the IEP team addressed the lack of access to virtual for Student [REDACTED] since March 30, 2020, in accordance with 34 CFR §§300.101, .320, .323, and .324. Therefore, this office does not find that a violation occurred with respect to Allegation #24.

### **Evaluations and Reevaluations**

### **FINDINGS OF FACTS:**

223. The student, [REDACTED] is nine (9) years old and is identified as a student with a disability under the IDEA. She attended [REDACTED] until the Statewide closure of school buildings in March 2020 and initiation of virtual learning due to COVID-19 pandemic.
224. There is correspondence to all PGCPSS principals from the PGCPSS Chief Academic Officer, dated September 2, 2020, which states that the school system was contracting with a vendor to remotely conduct educational assessments, where appropriate. It states that where remote testing is not appropriate, students would be tested in-person, by appointment, at a select school-based site or central office testing site. The correspondence indicates that special education teams need to work together to identify all students requiring initial evaluation or reevaluation and directs each special education chairperson to complete assessment data requests using a google form that was developed. It states that remote and in-person testing would begin by October 1, 2020.
225. An Initial Evaluation form, dated December 9, 2020, states that on November 20, 2020, the school staff received correspondence from the student's parent requesting an IDEA evaluation. In that correspondence, the parent expressed concern that the student was not doing well in school and believed that the student may need special services to assist with learning. The parent indicated that the student was struggling to complete assignments, was having difficulty focusing during group lessons, did not know what to do during independent work time, and was growing increasingly frustrated. The parent further indicated that several accommodations had been provided including frequent breaks, extended time to complete assignments, and use of a visible

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August 9, 2021  
Page 59

daily schedule, without success. Attached to the correspondence was a report from the student's private psychologist diagnosing the student with depression and anxiety.

226. The December 9, 2020 Initial Evaluation form states that the IEP team reviewed the data from the private assessments, parent concerns, and information from teachers that the student's class participation had decreased despite accommodations that had been provided. The team recommended that additional assessments be conducted in the areas of cognitive functioning, academic performance, social/emotional functioning, and expressive/receptive language, and that a classroom observation be conducted as well.
227. On December 15, 2020, the parent provided written consent to conduct the assessments.
228. On March 2, 2021, the IEP team convened and considered information from the parent and school staff about the student's behavioral/emotional functioning. Based on the data, the team decided that it continued to need additional data from the assessments recommended on December 9, 2020. The team documented its decision to conduct the assessments virtually. The written summary of the meeting states "The parent was made aware that assessments will occur virtually and may go over the timeframe due to COVID 19.
229. There is correspondence to all PGCPs principals from the PGCPs Chief Academic Officer, dated March 23, 2021, which states that in-person educational testing in school buildings could resume starting April 12, 2021.
230. The parent contact log reflects that, on April 30, 2021, the school staff attempted to schedule a speech/language evaluation, but the home telephone numbers listed for the parent were not working and the cell phone would not accept a voicemail message. Therefore, the school staff sent a text message to the cell phone number.
231. The parent contact log reflects that the school staff made contact with the parent on that date and scheduled the speech/language evaluation for May 6, 2021. The student's education record contains a report of the speech/language assessment, which states that it was conducted virtually on May 6, 7, 10, and 11, 2021.
232. A June 11, 2021 assessment report states that the remaining assessments were conducted virtually as well.
233. The IEP team completed the evaluation on June 16, 2021, and the student was identified as a student with a disability under the IDEA.

### **DISCUSSION/CONCLUSIONS:**

In this case, the complainant alleges that the PGCPs has not ensured that evaluations and reevaluations are being conducted since the COVID-19 pandemic.

Based on the Findings of Facts #223 - #233, the MSDE finds that, while evaluations and reevaluations are, in fact, being conducted, there have been delays in completing them, , including the evaluation for the

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August 9, 2021  
Page 60

Student [REDACTED] due to the health and safety restrictions posed by the COVID-19 pandemic, in accordance with COMAR 13A.05.01.06. Therefore, this office finds that a violation occurred with respect to Allegation #25.

Notwithstanding the violation, based on the Findings of Facts #223 - #233, the MSDE finds that the PGCPs is taking steps to complete evaluations and reevaluations without further delay. Therefore, no system-based corrective action is required to ensure the future provision of appropriate services to students with disabilities.

## **ALLEGATIONS #26 AND #27      WASHINGTON COUNTY PUBLIC SCHOOLS (WCPS)**

### **FINDINGS OF FACTS:**

233. The Student [REDACTED] is fifteen (15) years old, is identified as a student with an Other Health Impairment under the IDEA related to Attention Deficit Hyperactivity Disorder (ADHD), and has an IEP that requires the provision of special education and related services. The student is also diagnosed with Autism Spectrum Disorder and Oppositional Defiant Disorder.
234. The student was placed by the WCPS at [REDACTED] a nonpublic separate special education school until the closure of school buildings in March 2020 and initiation of virtual learning as a result of the COVID-19 pandemic. At the start of the 2020-2021 school year, the WCPS placed the student at [REDACTED], a nonpublic, separate special education school for instruction in the school building. Since October 13, 2020, the student has again been placed at [REDACTED] at the request of the parent after the [REDACTED] school building reopened.
235. The results of a cognitive assessment conducted in September 2019 reflect a cognitive ability in the “extremely low” range. However, the examiner noted that this may not represent the student’s ability because of the student’s low motivation and high level of distractibility, which interfere with his performance. The IEP in effect in March 2020 reflects that the student often refused to complete academic tasks, displayed disruptive and off task behaviors, and was only able to “at times” complete some academic tasks with staff assistance.
236. There is an email message from the [REDACTED] school staff to the student’s parent, dated April 23, 2020, that documents that on that date, the parent was provided with a proposed IEP amended for virtual learning.
237. The parent did not agree to the proposed IEP amendment, and therefore, on May 4, 2020, the IEP team convened to determine the services to be provided virtually. The documentation of the meeting reflects that the team considered information from the student’s parent that the student required an assistive technology device because she did not wish for him to work on the family laptop. The team agreed to provide the student with an iPad. The documentation of the meeting reflects that the school staff reported that the student demonstrated “some progress by increasing his academic productivity and refraining from off task and disruptive behaviors.”
238. At the May 4, 2020 IEP team meeting, the team considered the parent’s desire for the student to work towards achievement of a Maryland Certificate of Completion instead of a Maryland High

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August 9, 2021  
Page 61

School Diploma due to her belief that he would not be able to pass tests necessary to earn a Maryland High School Diploma. The team discussed that rating scales of the student's adaptive skills had been provided to the parent to complete in order to consider whether the student has a significant intellectual disability, but that the parent had not completed and returned them. The parent reported that she did not know how to get them to the school system and the school system staff provided information on how to do so. The team also discussed that the parent was having private testing conducted and that the results of that testing and the adaptive skills rating scales would be considered at the annual review, which was due to be conducted by July 30, 2020.

239. There is an email message from the school staff to the parent, dated May 6, 2020, documenting that the revisions made to the IEP on May 4, 2020 and a PWN document were provided to her on that date.
240. On July 27, 2020, the IEP team reconvened to conduct the annual IEP review. The team discussed that the student was currently participating in ESY services, but that his progress towards completion of the IEP goals was difficult to determine because the student was not completing work assignments. The documentation of the meeting reflects that the school staff reported that the student "has been increasingly responsive to staff support and redirection," and was participating in social work sessions regularly through a video conferencing platform, but that the parent could not get the student to sit down long enough to log onto the computer or complete work at home and that she was unable to provide supervision for the student. The IEP team decided that the student would be placed at [REDACTED] another nonpublic separate special education school with a highly structured, small group setting where the student could be provided with access to crisis and counseling supports in the school building.
241. On September 23, 2020, the IEP team reconvened and revised the self-management goal to increase the student's classroom participation. The team added more supports to the IEP, including providing information visually and using hands on activities and modeling to support learning, when possible. It was also revised to require weekly communication with the parent about the student's daily progress from information collected on daily point sheets, and to require that the parent be informed of any schedule changes in advance of the changes when possible.
242. On March 11, 2021, the IEP team convened and documented that the student had been offered virtual learning and been provided with work packets to complete at the parent's request. The team discussed that the student had been provided with counseling sessions by telephone as well as telephone calls with his teachers in order to provide him with support with accessing instruction, but that he was not regularly attending school and completing work. The team documented that the student had been offered in-person learning, and that this too, was unsuccessful.
243. At the March 11, 2021 IEP team meeting, the parent requested that the student be transferred back to [REDACTED]. The IEP team accepted the request. The team discussed that in-person learning would be increased from four (4) to five (5) days per week, and decided that the student change the staff member providing one (1) to one (1) support to the student's preferred staff member. The team also decided to increase the student's time with an instructional specialist, to implement a reward system with "increased frequency of earned activities/tangibles" based on the student's interests, to provide an escort for the student to and from the bus and throughout the school

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August 9, 2021  
Page 62

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building, and develop a safety plan to check the student for objects before he leaves home for school. The team also decided that the student would be given preferred jobs or tasks at school, to increase the amount of counseling provided, review locations in the building with the student where he can take breaks, and to have the parent and therapist review the plan with the student prior to his return to [REDACTED]

## **CONCLUSIONS:**

### **Allegation #26 Student [REDACTED] – Provision of Amended IEP**

In this case, the complainant alleges that the WCPS did not ensure that the IEP to address virtual learning was provided to the parent of Student [REDACTED] in a timely manner because it was not shared with her until April 23, 2021.

Based on the Findings of Facts #233 - #237, the MSDE finds that the IEP was not amended on April 23, 2021. Further, based on the Findings of Facts #233 - #239, the MSDE finds that the IEP was revised on May 4, 2020 after an agreement to amend the IEP could not be reached, and that the parent was provided with a copy of the revisions on May 6, 2020, in accordance with 34 CFR §§300.324, .503 and COMAR 13A.05.01.07. Therefore, this office does not find that a violation occurred with respect to Allegation #26.

### **Allegation #76 Student [REDACTED] – Access to Virtual Learning**

In this case, the complainant alleges that the WCPS did not address the inability of Student [REDACTED] to access virtual learning.

Based on the Findings of Facts #238 - #243, the MSDE finds that the WCPS ensured that the IEP team has taken appropriate steps to address the lack of access to virtual learning as well as in-person learning, for Student [REDACTED] as a result of his interfering behavior, since March 30, 2020, in accordance with 34 CFR §§300.101, .320, .323, and .324. Therefore, this office does not find that a violation occurred with respect to Allegation #27.

## **ALLEGATIONS #28 AND #29 WICOMICO COUNTY BOARD OF EDUCATION (WCBOE)**

### **FINDINGS OF FACTS:**

244. The Student [REDACTED] is fourteen (14) years old. On December 1, 2020, the student was 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. The student is assigned to [REDACTED] and High School, where she received education services until the March 2020 closure of school buildings and initiation of virtual learning due to the COVID-19 pandemic. Since February 18, 2021, the student has again been receiving education services in the school building.

245. On January 3, 2020, the student transferred to the WCPS from [REDACTED]. At that time, the student was not identified as a student with a disability under the IDEA.

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Ms. Trinell Bowman  
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Ms. Bonnie L. Walston

August 9, 2021  
Page 63

246. On February 26, 2020, the IEP team convened, and, based on a written IDEA referral made by the student's teacher, decided to conduct an IDEA evaluation. A Special Education Screening Form reflects that the student's teachers reported that the student was struggling with academics, and that she was requesting to visit the guidance and nurse's office frequently during class time to avoid classwork. It also reflects that, while not noted by the school staff, the student's parent reported that the student struggles with authority. The parent reported that the student is diagnosed with anxiety, oppositional defiant disorder, bipolar disorder, and depression. The documentation of the February 26, 2020 IEP team meeting reflects that the IEP team recommended that educational and psychological assessments be conducted as well as a classroom observation.
247. On June 11, 2020, the IEP team reconvened and considered data provided by the student's parent from her private mental health provider. Based on that data, the IEP team recommended that the psychological assessment include social, emotional functioning in addition to cognitive functioning.
248. On December 1, 2020, the IDEA evaluation was completed and the student was identified as a student with a disability. The documentation of the meeting reflects that the team considered that since the initiation of virtual learning, the student continued to avoid work by turning her camera off during instruction and not turning in work. The Evaluation Report reflects that the student's parent reported that teachers reached out to the student and offered one-on-one assistance, but that the student has refused to accept the offer.
249. The documentation of the December 1, 2020 IEP team meeting also reflects that the IEP team considered the results of a psychological assessment. The assessment report states that once safety protocols in accordance with the Centers for Disease Control (CDC) guidelines were put into place in September 2020, the assessment was conducted in-person. The report further states that the testing results should be viewed by taking the atypical testing session (plexiglass shield and face masks, which are not part of the assessment's standard procedures) into account. The report states that the student was found to have "low cognitive ability, with no processing deficits indicated."
250. The psychological assessment report states that "virtual instruction does not allow for the type of observation of school behavior and peer interactions and typical relationship-building that is needed" for teachers to have input into the assessment. However, it indicates that the student was found to demonstrate a high degree of emotional distress, separation fears, poor emotional control, excessive anger, high activity levels, aggressive behavior, and physical symptoms based on information provided by the student and her parent. Based on this information, the evaluator found evidence of characteristics of an Emotional Disability.
251. The documentation of the December 1, 2020 IEP team meeting further reflects that the IEP team considered the results of an educational assessment conducted in-person on October 14, 21, and 28, 2020. The report of the assessment states that the student performed in the "low" to "below average range" in academics with weaknesses noted in the areas of reading, written language, and mathematics.
252. The documentation of the December 1, 2020 IEP team meeting also reflects that a classroom observation that was attempted on November 20, 2020. The observer reported that the student did not have her camera on for class, did not reach out for help in the chat box, and did not respond to

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August 9, 2021  
Page 64

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teacher inquiries in the chat box about whether she required assistance, so it was difficult to observe whether she was following along with the class.

253. On December 16, 2020, the IEP team developed the IEP. The IEP included goals for the student to improve her academic performance and social, emotional functioning. The social, emotional goal requires the student to demonstrate self-calming strategies and meet with staff for support. It indicates that the student will use the private chat feature to inform the teacher that she needs to talk to a supportive adult and allows for the student to meet with a supportive adult in a break out room to assist with practicing strategies needed to return to the classroom. The IEP requires the provision of special education instruction, related counseling services to assist the student with achieving the goals, as well as supplementary aids and services and accommodations.
254. On March 18, 2021, the IEP team convened to address lack of expected progress towards achievement of the annual IEP goals due to the student's missing class time and not completing work. The documentation of the meeting reflects that, since receiving instruction in the school building again on four (4) days per week, the student's attendance and participation had increased. The school social worker reported that the student had met two of her attendance incentives. The team decided that the student would be provided with more special education instruction in a separate special education classroom, and to reconvene to consider her progress in April 2021.
255. On April 22, 2021, the IEP team reconvened and considered information that the student had been inconsistent with attending school both face-to-face in the school building and virtually, but that when she did attend, she is engaged and using the IEP supports. The team considered information that the student responded positively to incentives to address attendance and work completion. Based on this information, the team decided to develop a behavior contract with the student.
256. On June 7, 2021, the IEP team determined the compensatory services needed to redress the loss of services. The team also decided that the student requires ESY services. The parent requested that those services be provided virtually, and the IEP team agreed.

## **CONCLUSIONS:**

### **Allegation #28      Evaluations and Reevaluations**

In this case, the complainant alleges that the WCBOE did not ensure that evaluations and reevaluations have been conducted for Student [REDACTED] and similarly-situated students.

Based on the Findings of Facts #244 - #253, the MSDE finds that, from March 2020 until September 2020, the WCBOE was unable to complete in-person assessments due to the health and safety restrictions posed by the COVID-19 pandemic, and that this resulted in a delay in the completion of evaluations, including that for student [REDACTED] in accordance with 34 CFR §§300.111, .301, and COMAR 13A.05.01.06. Therefore, this office finds that a violation occurred with respect to Allegation #28.

Notwithstanding the violation, based on the Findings of Facts #244 - #253, the MSDE finds that the assessments for Student [REDACTED] could not have been conducted virtually, that the WCBOE has taken appropriate steps to make in-person assessments available in a safe manner consistent with the CDC



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August 9, 2021  
Page 65

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Dr. Kathy Pierandozzi  
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Ms. Rebecca Miller

Mr. Michael Thatcher  
Dr. Terri Savage  
Mr. Philip Lynch  
Ms. Trinell Bowman  
Dr. Jeff Gladhill  
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protocols. Therefore, no system-based corrective action is required to ensure the future provision of appropriate services to students with disabilities.

In addition, based on the Findings of Facts #254 - #256, the MSDE finds that the IEP team has determined the compensatory services needed to redress the loss of services. Therefore, no student-specific corrective action is required.

**Allegation #29      Student [REDACTED]**

In this case, the complainant alleges that the WCBOE has not ensured that the Student [REDACTED] lack of access to virtual learning has been addressed.

Based on the Findings of Facts #244 - #256, the MSDE finds that the WCBOE ensured that the IEP team has taken appropriate steps to address the lack of access to virtual learning as well as in-person learning, for Student [REDACTED] as a result of her interfering behavior, since March 30, 2020, in accordance with 34 CFR §§300.101, .320, .323, and .324. Therefore, this office does not find that a violation occurred with respect to Allegation #29.

**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 agencies to provide documentation of the completion of the corrective actions listed below<sup>2</sup>

This office will follow up with the public agencies to ensure that they complete the required actions consistent with the MSDE Special Education State Complaint Resolution Procedures. If any 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 of the action.<sup>3</sup> Dr. Birenbaum can be reached at (410) 767-7770 or at [nancy.birenbaum@maryland.gov](mailto:nancy.birenbaum@maryland.gov).

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<sup>2</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.

<sup>3</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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August 9, 2021  
Page 66

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## ANNE ARUNDEL COUNTY PUBLIC SCHOOLS (AACPS)

### Student [REDACTED]

The MSDE requires the AACPS to provide documentation that the IEP team for Student [REDACTED] has determined the amount and nature of compensatory services to remediate the loss of a FAPE from May 7, 2020 to January 4, 2021.

[REDACTED]

The MSDE requires the AACPS to provide documentation of the steps taken to ensure that staff at [REDACTED] follow proper procedures when amending an IEP to make sure that it is designed to offer a FAPE.

### Student [REDACTED]

The MSDE requires the AACPS to provide documentation that the IEP team for Student [REDACTED] has done the following:

1. Considered the effectiveness of the strategies recommended on December 18, 2020 to increase the student's access to instruction;
2. Considered strategies for the parents to use to increase the student's interest in virtual learning; and
3. Determined the amount and nature of compensatory services to remediate the loss of a FAPE during the period of virtual learning since May 7, 2020.

[REDACTED]

The MSDE requires the AACPS to provide documentation of the steps taken at [REDACTED]

1. That the school staff follow proper procedures when amending an IEP to make sure that it is designed to offer a FAPE;
2. That the IEP teams consider parent support to address the interfering behavior of students;
3. That the IEP team consider the amount and nature of compensatory services to remediate all identified loss of a FAPE without delay.

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Ms. Bobbi Pedrick  
August 9, 2021  
Page 67

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## **BALTIMORE CITY PUBLIC SCHOOL SYSTEM (BCPSS)**

### Student [REDACTED]

The MSDE requires the BCPSS to provide documentation that the IEP team for Student [REDACTED] has determined the amount and nature of compensatory services for days of in-person instruction lost as a result of lack of nursing and transportation services at the start of the 2020-2021 school year and the inability to address physical therapy needs virtually. These services are to be provided if the parent returns the student to in-person instruction during the 2021-2022 school year.

## **BALTIMORE COUNTY PUBLIC SCHOOLS (BCPS)**

[REDACTED]

The MSDE requires the BCPS to provide documentation of the steps taken to ensure that the [REDACTED] staff follow proper procedures when amending an IEP without convening an IEP team meeting.

### Student [REDACTED]

The MSDE requires the BCPS to provide documentation that the IEP team for Student [REDACTED] has determined the compensatory services needed to redress the loss of services to address the community/vocational/transition goal from March 2020 until after the first (1<sup>st</sup>) quarter of the 2020-2021 school year.

### Student [REDACTED] and Similarly-Situated BCPS Students

The MSDE requires the BCPS to provide documentation that it has convened IEP team meetings for the Student [REDACTED] and similarly-situated BCPS students within the school system whose IEP was amended to require consultative speech/language services instead of direct speech/language services during the period of virtual learning without convening the IEP team. For each student, the IEP team must determine whether the provision of consultative services had a negative impact on the student's ability to benefit from the education program, and if so, the compensatory services needed to remediate the loss of a FAPE.

### Student [REDACTED] and Similarly-Situated BCPS Students

The MSDE requires the BCPS to provide documentation that the IEP teams for Student [REDACTED] and similarly-situated BCPS students who have been identified as have lost a FAPE during the period of virtual learning have determined the compensatory services for the loss of a FAPE.

### System-Based

The MSDE requires the BCPS to provide documentation of the steps taken to ensure that IEP services are revised either through an IEP team meeting or agreement with the parent, and not unilaterally.

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Ms. Trinell Bowman  
Dr. Jeff Gladhill  
Ms. Bonnie L. Walston

August 9, 2021  
Page 68

The MSDE further requires the BCPS to provide documentation of the steps taken to ensure that IEP teams determine compensatory services for identified losses of a FAPE without delay.

## **CALVERT COUNTY PUBLIC SCHOOLS (CCPS) – ADDED ON AUGUST 10, 2021**

### Student-Specific

The MSDE requires the CCPS to provide documentation that the IEP team has determined the compensatory services or other remedy for the delay in identifying the student as a student with a disability under the IDEA.

### School-Based

The MSDE requires the CCPS to provide documentation of the steps taken at [REDACTED] to ensure that progress with supports in the general education program is monitor to ensure that they remain appropriate or whether an IDEA evaluation is required.

## **CECIL COUNTY PUBLIC SCHOOL SYSTEM (CCPSS)**

### Student [REDACTED]

The MSDE requires the CCPSS to provide documentation that the IEP team for Student [REDACTED] has reviewed and revised the IEP to address the student's interfering behavior and determined the compensatory services needed to remediate the loss of a FAPE as a result of those behaviors since January 27, 2021.

[REDACTED] [REDACTED]  
The MSDE requires the CCPS to provide documentation of the steps taken at [REDACTED] [REDACTED] to ensure that the IEP teams address students' interfering behaviors.

## **HOWARD COUNTY PUBLIC SCHOOL SYSTEM (HCPSS)**

### Student [REDACTED]

The MSDE requires the HCPSS to provide documentation that the IEP team has determined the compensatory services to remediate the loss of a FAPE to Student [REDACTED] as a result of virtual learning.

### Student [REDACTED]

The MSDE requires the HCPSS to provide documentation that the IEP team has determined the compensatory services to remediate the loss of a FAPE to Student [REDACTED] as a result of virtual learning.

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Ms. Trinell Bowman  
Dr. Jeff Gladhill  
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August 9, 2021  
Page 69

## **PRINCE GEORGE'S COUNTY PUBLIC SCHOOLS (PGCPS)**

[REDACTED]

The MSDE requires the PGCPS to provide documentation of the steps taken at [REDACTED] to ensure that each IEP addresses the student's needs and that PWN documents are provided in the native language of the parent.

### [REDACTED] and Similarly-Situated PGCPS Students

The MSDE requires the PGCPS to provide documentation that the IEP team has convened for Student [REDACTED] and similarly-situated PGCPS students who experienced a delay in completion of evaluations or reevaluations since March 2020 and determined whether the delay had a negative impact on the student's ability to benefit from the education program. Where a negative impact is found, the IEP team must determine the compensatory services to remediate the violation.

## **WICOMICO COUNTY BOARD OF EDUCATION (WCOBOE)**

The MSDE requires the WCOBOE to provide documentation that it has identified all students within the school system whose evaluations or reevaluations were delayed as a result of the closure of school buildings during the COVID-19 pandemic. For each student identified, the WCOBOE must provide documentation that the IEP team has determined whether the delay had a negative impact on the student's ability to benefit from the education program, and if so, the compensatory services needed to redress the loss.

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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Ms. Trinell Bowman  
Dr. Jeff Gladhill  
Ms. Bonnie L. Walston

August 9, 2021  
Page 70

The parents and public agencies 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 students, 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

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