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State Superintendent of Schools

September 10, 2020




Ms. Trinell Bowman
Executive Director
Department of Special Education
Prince George's County Public Schools
John Carroll Elementary School
1400 Nalley Terrace
Landover, Maryland 20785

RE: 
Reference: #21-001

Dear Parties:

The Maryland State Department of Education (MSDE), Division of Special Education/Early Intervention Services (DSE/EIS), has completed the investigation of the complaint regarding special education services for the above-referenced student. This correspondence is the report of the final results of the investigation.

ALLEGATIONS:

Beginning on July 16, 2020, the MSDE received several correspondences from Mr.  hereafter, “the complainant,” on behalf of his son, the above-referenced student. In those correspondences, the complainant alleged that the Prince George’s County Public Schools (PGCPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to the student.

The MSDE investigated the following allegations:

Individualized Education Program (IEP) Development

1. The PGCPS has not ensured that the IEP has addressed the student’s interfering behavior of touching his feces since July 16, 2019, in accordance with 34 CFR §300.324.
2. The PGCPS has not ensured that the IEP has addressed the student’s need for extra clothing at school due to fecal touching behavior and other bowel movements (accidents) since July 16, 2019, in accordance with 34 CFR §300.324.

3. The PGCPS has not identified the student as a student with an Other Health Impairment under the IDEA as a result of a diagnosis of epilepsy and ensured that the student's needs arising out of epilepsy have been addressed since June 9, 2020, in accordance with 34 CFR §§300.301 - .304 and .324. This includes the following:
 - a. The IEP team did not consider information about the student's epilepsy in a timely manner following the report of his diagnosis at an IEP team meeting held on June 9, 2020, the provision of medical documentation of the diagnosis to the school staff from June 18, 2020 to July 5, 2020, and additional information provided at the July 6, 2020 IEP team meeting;
 - b. The IEP does not address the student's need for adult support throughout the school day, including during transportation;
 - c. The IEP does not address the student's need to leave class following a seizure;
 - d. The IEP does not address the student's need for an emergency call to first responders and parents following a seizure lasting longer than five (5) minutes; and
 - e. The IEP team did not address the parent concern at the July 6, 2020 IEP team meeting that the school system staff be trained on the student's seizure medication.
4. The PGCPS did not ensure that parental consent was obtained prior to conducting assessments used to determine present levels of performance reflected in the June 9, 2020 IEP, in accordance with 34 CFR §300.300.
5. The PGCPS did not ensure that information was provided about the individuals who would be attending the June 9, 2020 IEP team meeting in writing no less than ten (10) days before the meeting, in accordance with 34 CFR §300.322 and COMAR 13A.05.01.07.
6. The PGCPS did not ensure that the IEP team that convened on June 9, 2020 included a special education teacher or provider of the student, in accordance with 34 CFR §300.321.
7. The PGCPS did not ensure that the IEP team considered the parent information and concerns at the IEP meeting held on June 9, 2020, in accordance with 34 CFR §300.324.
8. The PGCPS did not ensure that proper procedures were followed when including the use of physical restraint and seclusion on the IEP and Behavioral Intervention Plan (BIP) on June 9, 2020, in accordance with COMAR 13A.08.04, as follows:
 - a. The school staff did not review available data to identify any contraindications to the use of physical restraint and seclusion based on medical history or past trauma, including consultation with medical or mental health professions, as appropriate;

- b. The school staff did not identify the less intrusive, nonphysical interventions that will be used to respond to the student's behavior until physical restraint and seclusion is used in an emergency situation; and
 - c. The behavioral interventions were included in the IEP despite parental refusal to provide consent.
9. The PGCPS did not provide Prior Written Notice (PWN) of the decisions made on June 9, 2020, in accordance with 34 CFR §300.503.
 10. The PGCPS did not ensure that information was provided about the individuals who would be attending the July 6, 2020 IEP team meeting in writing no less than ten (10) days before the meeting, in accordance with 34 CFR §300.322 and COMAR 13A.05.01.07.
 11. The PGCPS did not ensure that the IEP team that convened on July 6, 2020 included a special education teacher or provider of the student, in accordance with 34 CFR §300.321.
 12. The PGCPS did not provide PWN of the decisions made on July 6, 2020, in accordance with 34 CFR §300.503, specifically notice of the basis for proposing to create a School Seizure Action Plan.

IEP Implementation

13. The PGCPS has not ensured that the school staff, including the principal and behavior specialist, obtained baseline data on the student's interfering behaviors and that the IEP team determined the behaviors to target with behavioral interventions, as determined by the IEP team on July 16, 2019, in accordance with 34 CFR §§300.101 and .323.
14. The PGCPS did not ensure that training was provided as a result of changes to transportation staff, as required by the IEP, from July 22, 2019¹ to April 10, 2020, in accordance with 34 CFR §§300.101 and .323.

Parental Rights

15. The PGCPS has not ensured access to the educational record in response to a request made on June 29, 2020, in accordance with 34 CFR §300.613.

BACKGROUND:

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

¹ While the complaint indicated that the time period began on July 16, 2019, the allegation was not received until July 22, 2020. Because the complaint investigation procedure can only address those violations that are alleged to have occurred within one (1) year of the receipt of the State complaint, the complainant was informed, in writing, that the time period for the investigation of the allegation would begin on July 22, 2019.

The student is placed by the PGCPs at [REDACTED] a nonpublic, separate, special education school, which he attended from July 1, 2019 until the Statewide closure of schools as a result of the national COVID-19 pandemic.

ALLEGATIONS #1, #2, AND #13

**ADDRESSING FECES TOUCHING,
ADDRESSING THE NEED FOR EXTRA
CLOTHING, AND OBTAINING BASELINE
DATA ON INTERFERING BEHAVIORS
SINCE JULY 16, 2019**

FINDINGS OF FACTS:

1. The IEP in effect on July 16, 2019 stated that since 2013, the [REDACTED] staff trialed a variety of sensory/self-regulation strategies with the student, which “were not found to be beneficial.” It stated that the student “frequently demonstrates internal and external distractibility, impulsive behaviors, and decreased engagement throughout the school day,” which is the “primary reason why he requires prompting to complete tasks in the classroom environment, difficulties with self-regulation.”
2. The IEP in effect since July 16, 2019 has required that the student be provided with one-to-one adult assistance with task completion and all activities of daily life, such as toileting, feeding, and hygiene, while in school. The IEP has required proximity control to facilitate task completion, structured routines, access to breaks, continuous reinforcement, frequent redirection, motivators and reinforcers, use of positive behavioral supports and the ability to earn rewards for appropriate behavior, clear and explicit classroom rules, and teaching of replacement behaviors.
3. The IEP states that the student requires assistance with toileting due to his history of fecal smearing and play while using the restroom. The IEP requires blocking of the student’s maladaptive behaviors during toileting and assisting the student with standing and washing his hands when he is finished. The IEP states that as soon as the student demonstrates the ability to complete toileting routines without maladaptive behaviors, staff support will fade to allow for bathroom independence.
4. A review of the audio recording of a July 16, 2019 IEP team meeting reflects that, at that meeting, the team considered the complainant’s concerns about the student’s health and safety on the bus as a result of toileting accidents he had on the bus at the start of the school year in July 2019 and his having smeared his feces. At that time, the complainant requested the same level of one-to-one support on the bus as he has in school to keep the student from touching his feces during toileting accidents on the bus.
5. A review of the audio recording of the July 16, 2019 IEP team meeting reflects that the IEP team denied the complainant’s request for one-to-one support on the bus based on the school, transportation, and school system staff’s reports of the student’s needs. These reports include that: (a) the student has a history of having toileting accidents on the bus

- at the start of each school that do not continue once he is established in a routine; (b) the student normally sleeps on the bus; (c) none of the other students on the bus require the level of support required by the student and the assigned bus aide is capable of keeping the student from touching his feces when seated close to him; (d) a plan was in place to ensure that the student's bus has priority parking close to the school building and that the student is exited from bus on an expedited manner to decrease the likelihood of a toileting accident on the bus; and (e) a plan was in place to ensure that the bus staff are informed of and trained on the student's needs.
6. A review of the audio recording of the July 16, 2019 IEP team meeting reflects that the complainant requested that the student's bowel movements be tracked on a daily basis, and that the student's mother requested the same information be tracked with respect to aggressive behavior. The school staff reported not having observed aggressive behavior recently and the school system staff indicated that only those behaviors that the staff observe to be interfering with the student's learning would need to be addressed in the IEP. However, the IEP team agreed to track the number of behaviors, including aggression and bowel movements, on a daily basis to obtain baseline data to identify whether these are behaviors that are interfering with the student's learning. The team did not discuss the specific information that would be collected, other than that the number of bowel movements and incidents of aggression would be counted, or how and by whom it would be collected. However, the written summary of the meeting states that "the principal will meet with the school staff and behavioral specialist to get a baseline and determine what behaviors need to be addressed."
 7. A review of electronic mail (email) correspondence from the complainant to the student's special education teacher, dated July 17, 2019, documents that the complainant provided the teacher with information on the strategies used by the student's previous school to prevent the student from touching his feces when toileting. This included using a sheet over the student's lap and having him hold his hands together during toileting. There are also emails from the student's current and previous schools that document communication between the schools about addressing the student's "tendency to fecal smear and rectal dig." The student's previous school reported that there was no specific toileting protocol developed, but that staff used disposable mats for the student's lap, face shields, and gowns for staff, and that they attempted to keep the student attentive through engaging him in song and the use of the iPad and "fidgets" during toileting. The previous school reported being able to fade this support "significantly" once the student became familiar with the routine.
 8. A review of bus incident reports reflects that there were no more reported toileting accidents on the bus after July 2019.
 9. The school staff maintained daily logs during the 2019-2020 school year reflecting the number of bowel movements, physical aggression, and spitting incidents the student had each day, which contained notations of when the student required extra clothing if he soiled himself at school. The daily logs reflect that spitting and aggression were not

frequency observed. However, the logs reflect that the student frequently had more than one (1) bowel movement and had up to seven (7) bowel movements at school each day. They document that there were several incidents throughout the school year of the student soiling his clothing, both in the restroom and the classroom. The daily reports do not require the staff to indicate whether or not there was fecal smearing behavior every time the student had a bowel movement. However, the school staff attached notes to reports providing information about what occurred when there were toileting accidents. The logs for September 5 and 11, 2019, November 7 and 14, 2019, December 6 and 17, 2019, and February 3, 11, and 18, 2020 note incidents of fecal smearing.

10. A review of the audio recording of a June 9, 2020 IEP team meeting reflects that at that meeting, the team considered the baseline data that was collected. The complainant stated that he had expected more specific information to be collected about the student's toileting, including about what occurred before, during, and after each toileting incident. The complainant also stated that he wanted the school staff to indicate whether or not the student touched his feces every time he had a bowel movement, regardless of whether it was related to a toileting accident. The complainant expressed his belief that the student was regularly engaged in fecal smearing and throwing because of the frequency with which he soiled his clothing, and that this is a behavior that should be addressed through the BIP.
11. A review of the audio recording of the June 9, 2020 IEP team meeting reflects that the school staff explained that the student's clothing was frequently soiled because he had toileting accidents, and denied that the student frequently engaged in fecal touching and smearing or that he smeared feces every time there was a toileting accident. Based on the complainant's continued concerns, the IEP team decided that when normal school operations resume, data will be collected in the manner requested by the complainant in order to assure him that there is no pattern of fecal smearing that needs to be addressed through BIP interventions.
12. There is no documentation that the principal met with the behavioral specialist to determine the targeted behaviors to recommend for interventions, consistent with the PWN of the July 16, 2019 IEP team meeting. However, a review of the documentation and audio recording of the June 9, 2020 IEP team meeting reflects that the principal and the student's special education providers reported on the behaviors observed during the 2019-2020 school year, which they recommended be addressed through the BIP. They reported that these behaviors included distraction, impulsivity, aggression, and food seeking activity, and that they did not see elopement or spitting behavior. The complainant reported that since the closure of school buildings, he has seen increased aggression in the student, as well as physical disruption, and that he anticipates that this behavior will continue. Based on that information, the IEP team agreed that the BIP would be revised to address all of the behaviors being seen, and that an updated Functional Behavioral Assessment (FBA) would be conducted when the student returns to a school-based program in order to assess the situation again at that time.

13. The statement of the student's present levels of performance in the July 9, 2020 IEP includes information that the student experiences toileting issues/incontinence and has touched and thrown his feces during toileting. It reflects that the student requires prompts from staff to use the restroom in addition to regular scheduled toileting breaks. It also reflects that the student is not able to clean up after himself in the bathroom and requires staff assistance with toileting and hygiene such as handwashing.
14. The July 9, 2020 IEP states that the student will be prompted by staff to take a bathroom break every twenty (20) minutes to avoid incontinence issues, that staff will have access to gloves, gown, and wipes to assist the student in cleaning himself, and that staff will guide the student through hand washing. It also states that a drape will be placed over the student's lap when toileting and that staff will prompt the student to clasp his hands together to avoid his touching his feces. It further states that visual aids to support routines such as proper handwashing techniques will be posted by the sink as well as those for the student to request a bathroom break.
15. A review of emails between the complainant and the special education teacher during the 2019-2020 school year reflects that the complainant notified the teacher on several occasions that the student was coming home with other students' clothing, and that he expressed concern that the student's own clothing was not being returned from school. The documentation reflects that the complainant has expressed frustration that the school staff continued to ask that he send more clothing to school when the school already has extra clothing of the student's.
16. While the statement of the student's present levels of performance in the July 9, 2020 IEP identifies the needs including "the student requires a change of clothes at school in case he has a bowel movement and soils his uniform," the IEP does not indicate how this need will be addressed.

DISCUSSION/CONCLUSIONS:

Each student with a disability must be provided with a Free Appropriate Public Education (FAPE) through an IEP that addresses the student's needs. A FAPE means special education and related services that are provided at public expense under public supervision and direction, and without charge (34 CFR §§300.17 and .101).

While changes can be made to the IEP by amendment through agreement of the parent and the school system after development of the annual IEP, the IEP team is responsible for developing the IEP (34 CFR §300.324).

In developing each student's IEP, the IEP team must consider the academic, developmental, and functional needs of the student and the concerns of the parents for enhancing the education of the student in order to ensure that all needs are identified and addressed, whether or not commonly linked to the disability category in which the student has been classified (34 CFR §§300.304 and .324).

In the case of a student whose behavior interferes with his learning or that of others, the IEP team must consider the use of positive behavioral interventions and supports, and other strategies, to address the behavior (34 CFR §300.324).

Allegation #1 Addressing Feces Touching Behavior

In this case, the complainant alleges that the student's feces smearing should be addressed with interventions through the BIP, and that the toileting assistance included on the IEP is not sufficient to address this area of need.

Based on the Findings of Facts #1 - #12, the MSDE finds that there is data to support the school staff's position that this is not a frequent behavior that needs to be addressed through the BIP, in accordance with 34 CFR §300.324.

In addition, based on the Findings of Facts #10 - #14, the MSDE finds that the IEP addresses feces touching and that the team has agreed to collect additional data as requested by the complainant in response to his concern that the behavior cannot be sufficiently addressed through the toileting assistance required by the IEP. Therefore, this office does not find that a violation occurred with respect to the allegation.

Allegation #2 Addressing the Need for Extra Clothing

The IEP must include a statement of the student's present levels of performance, including how the student's disability affects the student's involvement in the general education curriculum. It must also include the special education and related services and supplementary aids and services that will be provided to enable the student to advance appropriately toward attaining the IEP goals, be involved in the general curriculum, and be educated and participate in education with other students (34 CFR §§300.17 and .320).

In this case, the complainant alleges that, while he has provided extra clothing at school, it is often lost or misplaced, and that while the IEP identifies the need for additional clothing, the PGCPs has not ensured the availability and proper management of the student's clothing at school.

Based on the Findings of Facts #15 and #16, the MSDE finds that the IEP identifies the need for additional clothing at school, but does not reflect how this need will be addressed by the PGCPs, in accordance with 34 CFR §300.324. Therefore, this office finds that a violation occurred with respect to the allegation.

Allegation #13 Obtaining Baseline Data on Interfering Behaviors

In this case, the complainant alleges that the PGCPS did not ensure that the principal met with the behavioral specialist to get baseline data and determine the behavior to be addressed through behavioral interventions, consistent with the decision made by the IEP team on July 16, 2019.

Based on the Findings of Facts #6 and #12, the MSDE finds that there is no documentation of a meeting between the principal to determine the behavior to address through behavioral interventions, as indicated in the PWN of the July 16, 2019 IEP team meeting.

However, based on the Finding of Fact #6, the MSDE finds that the audio recording of the IEP team meeting demonstrates that the team did not decide that the principal would unilaterally determine the behaviors to target through the BIP, with consultation from the behavioral specialist and other school staff. Further, the MSDE finds that such decisions must be made by the IEP team or by agreement between the school system and the parent.

Based on the Findings of Facts #6 and #12, the MSDE finds that data on the student's interfering behaviors was obtained and used by the IEP team, including the principal, the student's special education providers, and the parents, to identify behaviors to address through a BIP, consistent with the July 16, 2019 determination, in accordance with 34 CFR §§300.101 and .323.

In addition, based on the Findings of Facts #10 - #12, the MSDE finds that the IEP team continues to collect data on the student's behaviors to address the complainant's disagreement with the data collection method used, in accordance with 34 CFR §300.324. Therefore, this office does not find that a violation occurred with respect to the allegation.

**ALLEGATIONS #3 AND #12 IDENTIFYING AND ADDRESSING EPILEPSY
SINCE JUNE 9, 2020 AND
AND PWN OF DECISIONS MADE ON JULY 6, 2020**

FINDINGS OF FACTS:

17. A review of the written summary and audio recording of the June 9, 2020 IEP team meeting reflects that the meeting was held to conduct the annual IEP review. An email from the complainant to the school staff, dated June 9, 2020 at 7:58 a.m., reflects that the morning of the meeting, the complainant reported that the student "has a new diagnosis now," specifically epilepsy. The complainant stated that as a result, the student "needs several new supports," including one-to-one support during transportation, field trips, and transition activities, "training by a medical professional to detect seizures and associated symptoms," administration of medication, and implementation of an emergency seizure protocol in response to seizures. The complainant reported that this protocol "includes, but is not limited to," administering medicine, which "may be required to be administered at noon on a regular basis."

18. A review of the audio recording of the June 9, 2020 IEP team meeting reflects that the school system staff reported that they had not observed seizures at school. The school system staff stated that they needed medical information about the seizures in order to develop a health plan, including administration of medication, and determine whether the student requires educational supports to be added to the IEP. The complainant asked if there was a PGCPs policy or procedure requiring this, and the school system staff said that they always require documentation of medical needs in order to consider how to address those needs in the school setting, and that a prescription from a medical doctor and parent consent must be obtained before administering medication to a student. The complainant asserted that his reporting about the student's health needs should be sufficient for the team to make these determinations. However, the IEP team disagreed that the information provided was sufficient to grant the complainant's requests.
19. A review of the audio recording of the June 9, 2020 IEP team meeting reflects that the school-based members of the team explained that the complainant needed to provide information from the student's physician about the frequency of the seizures, any medication that needs to be administered at school, and information about any other supports required. They clarified that another IEP team meeting would not be needed to develop a health plan and administer medication if they received information from a physician, but that the IEP team would need to reconvene to consider any data from a physician that included recommendations for educational supports.
20. On June 18, 2020, the complainant provided the school staff with a receipt for a prescription for clonazepam, dated June 15, 2020, and information about the medication from the manufacturer, which reflects that it was dispensed in the form of a tablet that dissolves on the tongue or in the mouth.
21. On June 19, 2020, the complainant sent the school staff an email forwarding instructions for administration of the medication clonazepam "1 mg DOT [Emphasis added] on inside of mouth," signed by a physician from the [REDACTED] and written consent from the complainant to administer the medication. The instructions state that the medication is to be administered in pill form by mouth for a seizure lasting longer than five (5) minutes. It also states that under those circumstances, first aid should be administered, 911 called, and parents notified.
22. In his June 19, 2020 email to the school staff, the complainant requested another IEP team meeting, stating the following:

"I have additional concerns about the education program" and
"have additional information about [the student]."
23. On June 19, 2020 and July 2, 2020, the school staff responded to the complainant's June 19, 2020 email stating the following:

Please share your additional concerns about the education program and forward the new information you would like for the team to consider. This will give us the opportunity to review the information and the meeting to be solution-focused.

24. On July 3, 2020, the complainant sent the school staff an email stating “I am not entirely sure what you are looking for. Your email is raising more questions than it answers anything.” The email further states the following:

I have been sending additional concerns and/or new information thought [sic] and some since last IEP meeting. Could you please let me know the solution the District came up with based on the additional concerns and information I already provided as soon as possible, but not later than within one (1) day of this email. Also, please explain the District’s solution strategies. I will continue to provide additional concerns and information as appropriate.

25. On July 6, 2020, at 8:00 a.m., the school staff responded as follows:

You requested the meeting but did not clarify what concerns you specifically wanted to address. We have addressed any concerns we know about to date. We afford parents five days notification and would expect the same from you. I look forward to speaking with you at the IEP meeting.

26. On July 6, 2020, at 9:00 a.m., the IEP team convened in response to the complainant’s request without the school staff having received additional information from the complainant about his new concerns about the educational supports needed by the student.

27. An email from the complainant to the school staff on Sunday, July 5, 2020 at 10:22 p.m. reflects that the complainant provided the school staff with documents the night before the meeting. These documents included a June 23, 2020 doctor’s note from the physician at the [REDACTED] stating the following:

[The student] is currently taking oxcarbazepine 300 mg per 5 mL twice daily. For seizures longer than 5 minutes, he should be given clonazepam 1 mg ODT [Emphasis added] 1 side of mouth. Given the child is nonverbal, and has an intellectual disability, he needs adult supervision at all times who will be capable of giving him emergency medicines and calling emergency medical personnel at all times, including when he is riding the bus for safety reasons. Please refer to seizure action plan for further details.

28. The seizure action plan, dated July 1, 2020, describes the student’s seizure type as “behavior arrest, unresponsiveness.” With respect to length and frequency, the document

states “1-2 minutes, likely partial.” The seizure action plan states that when providing first aid in the event of a seizure, “do not put anything in mouth.” It also states that the student needs to leave the classroom and should be returned “once back to baseline status.” It states that for a seizure lasting longer than 5 minutes, 911 should be called, the parent notified, and emergency medication prescribed as follows: “clonazepam 1 mg ODT on inside of mouth.”

29. A review of the audio recording of the July 6, 2020 IEP team meeting reflects that a PGPCS nurse manager and a health services representative participated in the meeting. The school staff reported that they were all trained on responding to seizures, and asked when the student last experienced a seizure and whether there are cues that a seizure is about to occur. The complainant indicated that the last seizure occurred some time in April 2020 after schools closed due to the COVID-19 pandemic, and that there are no signs that could alert the school staff that the student is about to experience a seizure. The student’s mother reported that the student had experienced three (3) seizures since January 2020, and that prior to that time, he had not had a seizure in eight (8) years. She further reported that the student’s arms and head jerk during seizures.
30. A review of the audio recording of the July 6, 2020 IEP team meeting reflects that the nurse manager expressed concern about the school staff being bit and the student aspirating if a pill is placed in his mouth during a seizure and wanted to explore whether it would be safer to administer the medication by the student’s rectum, as she believed that was the typical practice under such circumstances. The complainant indicated that he does not want the medication administered by the student’s rectum for “modesty reasons.” The complainant asked how long the nurse manager had been practicing. When the nurse manager indicated that she had been practicing since 1986, the complainant suggested that she needs more training on responding to seizures.
31. A review of the audio recording of the July 6, 2020 IEP team meeting reflects that the health services representative reported that the medication comes in a liquid form, and that the complainant reported that it would be better if it was administered in pill form. The school staff asked for consent to speak with the physician to clarify and the complainant refused.
32. A review of the audio recording of the July 6, 2020 IEP team meeting reflects that the school staff expressed concern that the family’s report of what the student’s seizures look like seemed inconsistent with information from the physician that the student was experiencing “likely partial” seizures. The team decided it needed clarification from the physician about the administration of medication and the seizure activity, such as how frequently they may occur and what the student does during a seizure, in order to determine what the seizure action plan should require. The complainant expressed concern that he was not informed in advance of the meeting of the school system’s questions when he provided information about medication on June 18 and 19, 2020.

33. A review of the audio recording of the July 6, 2020 IEP team meeting reflects that the IEP team rejected the complainant's requests for additional educational supports to address the student's seizures, including the request for one-to-one adult support on the bus in addition to the assigned bus aide, due to insufficient information of the student's need. The school staff again requested consent to speak with the student's physician to obtain more information about the student's seizures, and the complainant again refused, stating that the team should simply accept the action plan he provided. He did, however, agree to pose the school staff's questions to the physician and to provide the school staff with the physician's responses. However, he requested that the school staff provide him with a list of questions in writing before contacting the physician.
34. The school system developed a document, entitled "Prior Written Notice," (PWN document) that states the following with respect to decisions made at the July 6, 2020 IEP team meeting:

Although school staff, in general, are trained on seizure protocols, the IEP team agrees with the school staff and the PGCPS Office of School Health and the PGCPS Nurse Manager that a School Seizure Action Plan training, to include bus staff, should be developed. However, in order to develop a School Seizure Action Plan and train staff appropriately in the school setting, the training must be based on information directly from the medical provider that addresses the specific needs of [the student], as all seizures do not present or look the same. It was explained to the family that without this crucial information from the medical provider, it would be difficult to develop an appropriate training in order to be prepared should an incident occur in the school setting. The IEP team is requesting additional information in order to develop the School Action Plan and the appropriate training for staff, specifically, permission to speak directly with [the student's] health care provider. While we are in receipt of a prescription, we need further information. A prescription does not give all of the individual seizure information, and PGCPS requests to speak to [the student's] medical provider to learn what is typical for him, as we cannot make assumptions about his care. If we are given permission to speak directly to the provider, there would be no delay in developing an Action Plan that is specific to [the student's] needs.

35. The PWN document further states that the Office of School Health is in need of the following additional information:
- a) How often does seizure activity occur?
 - b) How long do they usually last?
 - c) When was his last seizure?
 - d) How does his seizure activity present itself?

- e) How long does his postictal state last?
- f) What does he normally do during this stage?
- g) Has the clonazepam ever been administered and if so when was the last time?
- h) For safety reasons is it possible to have liquid clonazepam instead of a tablet?

36. The PWN document further states the following:

The parent provided an email on July 5, 2020 with two attachments (letter from a physician at [REDACTED] dated June 23, 2020 and Seizure Action Plan on the Epilepsy Foundation form dated July 1, 2020). The team acknowledged receipt of the email. The PGCPS Office of School Health representatives requested to speak with the medical provider directly to get clarification regarding medication options in the school setting and additional details in order to get a full picture of [the student's] seizures. The father responded – the school district already has a full picture based on the information he provided. The IEP team is not in agreement and that more information is needed as described above.

37. The PWN document also states the following:

The PGCPS Office of School Health representatives noted differences/contradictions in the letter from the doctor and the seizure action plan that was provided as well as differences in the descriptions of the seizure activity by the parents and what the seizure action plan describes. This creates further need for communication directly with the health care provider. For example, a prescription says to put a pill in his mouth and Action Plan says don't put anything into his mouth.

In addition, the PWN states that the IEP team needs additional information as described in order to consider the complainant's requests for educational supports to address the seizure disorder.

38. On July 15, 2020, the school system staff sent the complainant an email stating the following:

Per the Office of School Health, the physician order form is invalid as there is no such thing as 1 mg *DOT* [Emphasis added]. As a result, no licensed nurse can administer the medication. Therefore, an updated order is needed. If the medical provider/physician's office would like to speak to the Office of Health Services to clarify the physician's order, please sign and return the consent form so they can communicate with one another.

39. On July 17, 2020, the complainant sent the PGCPS staff an email asking the following:

If it is changed to 1 mg *ODT* [Emphasis added] on the form, is there going to be any issue?" I understand from your email that, if I sign the consent form to communicate between [the student's] doctor and the PGCPS that you sent me, I don't have to obtain a revised physician order for consent to administer medicine, as the physician and PGCPS can talk and clarify things."

40. On July 17, 2020, the PGCPS responded as follows:

The medication order cannot be changed to 1 mg *ODT* [Emphasis added] on the form. A new doctor's order is needed. Yes, if you sign the consent form, PGCPS can get clarity both verbally and in writing. They will request the updated medication order from the provided. Students receive medication in accordance with school guidelines. I have attached [REDACTED] School Handbook which contains this information.

41. On July 20, 2020, the complainant sent the staff from the PGCPS Nonpublic Office an email asking the following:

Could you please explain why PGCPS believes that liquid clonazepam is safer than tablet? How will be the liquid be administered? Don't you think that liquid will flow out of the mouth? Please let me know by end of day today.

42. On July 20, 2020, the PGCPS School Health Specialist sent the complainant an email responding as follows:

During seizure activity the muscles can become rigid and the body is shaking. With liquid clonazepam you can insert the tip of the plastic syringe between the gums and the cheek area to administer the medication. With a tablet you have to use your hand/fingers to open the cheek and insert it. Therefore, there is a greater chance of injury to the person administering it as well as to the child. Also the liquid form absorbs quicker.

43. On August 10, 2020, the complainant sent the PGCPS School Health Specialist an email stating the following:

I would like to make sure that we are on the same page regarding your concern about the tablet. This tablet is not a regular tablet. It is an *ODT* [Emphasis added]/disintegrating tablet which needs to be placed on the side of the mouth and will melt quickly. No water required. You don't put the tablet on the tongue and don't put your fingers in between the teeth. He doesn't have to swallow the tablet. Could you please confirm that you have the same understanding?

44. On August 11, 2020, the staff from the PGCPS School Health Specialist responded to the complainant as follows:

The tablet will need to be placed inside of the cheek using someone's fingers. Saliva will dissolve the medication and the buccal mucosa (the membranes within the cheek area) will absorb it. If someone is moving/shaking during seizure activity for safety reasons it is more advantageous to use a plastic syringe to get the medication into the cheek area. The liquid like the tablet will be absorbed by the buccal mucosa. If you have any further questions please let me know.

45. On August 11, 2020, the complainant sent the PGCPS School Health Specialist an email asking the following:

Since you are raising safety concerns with the tablet, is [the student] required to obtain a prescription for liquid clonazepam in order to attend school?

46. On August 11, 2020, the PGCPS School Health Specialist responded as follows:

Any medication that requires administration at school must have a physician's note.

47. On August 11, 2020, the complainant sent the PGCPS School Health Specialist an email stating the following:

That is not what I asked. Currently liquid clonazepam is not prescribed for [the student].

1. Do I need to obtain a prescription for liquid clonazepam in order for [the student] to attend school?
2. If I provide a physician order for clonazepam tablet will it be administered while [the student] is in the school and school bus?

48. On August 13, 2020, the school staff responded to the complainant "Your understanding is correct. You don't need to obtain liquid clonazepam in order for [the student] to return to school." On August 24, 2020, the PGCPS staff responded to the complainant that an order is needed only if the school staff would administer the medication, and that if an order is received, the medication will be given at school and on the bus. The PGCPS staff further reminded the complainant that a new physician's order is required.

49. To date, the complainant has not provided the requested information from the student's physician or a revised physician's order for medication.

DISCUSSION/CONCLUSIONS:

Allegation #3 Identifying and Addressing Needs Arising out of Epilepsy Since June 9, 2020

Identifying Epilepsy

In order to identify a student as a student with a disability under the IDEA, the student must have one of a list of disabilities, including Other Health Impairment (OHI) due to problems such as epilepsy, and must by reason thereof, require special education and related services (34 CFR §300.8). Special education is defined as specially designed instruction, which means adapting the content, methodology, or delivery of instruction to the student's unique needs. Related services are supportive services, such as school health and nursing services, needed in order for the student to benefit from specially-designed instruction (34 CFR §300.34). If a student requires related services, but not specially-designed instruction, as a result of a disability, the student does not meet the criteria for identification as a student with a disability under the IDEA (34 CFR §300.8).

In this case, the complainant alleges that the student should be identified with epilepsy under the IDEA.

Based on the Findings of Facts #17 - #33 and #38 - #49, the MSDE finds that there is no data that the student requires specially-designed instruction as a result of epilepsy, in accordance with 34 CFR §300.8. Therefore, this office does not find that there is data that the meets the criteria for identification as a student with an OHI as a result of the condition, and does not find that a violation occurred with respect to this aspect of the allegation.

Addressing Needs Arising out of Epilepsy

The IDEA requires that all of a student's needs be identified and addressed, whether or not commonly linked to the disability category in which a student is classified (34 CFR §300.304).

In this case, the complainant alleges that the PGCPS has not ensured that the student's needs arising out of epilepsy have been identified in a timely manner, including the student's need for administration of medication and the provision of educational supports such as, one-to-one adult assistance during transportation, and school staff training. He asserts that he provided sufficient information for the IEP team to address these needs and that the IEP team refused to consider the student's needs based on a policy, practice, or procedure that requires parents to provide information five (5) days before an IEP team meeting in order for those concerns to be addressed at an IEP team meeting. The complainant further asserts that, while he provided the school staff with documentation of the student's epilepsy from June 18, 2020 to July 5, 2020, they waited until the IEP team meeting on July 6, 2020 to inform him that it was not sufficient, thereby further delaying consideration of the student's needs.

Based on the Findings of Facts #17 - #49, the MSDE finds that the documentation does not support the allegation that the school system imposes a requirement that parents raise concerns five (5) days before an IEP team meeting in order for them to be considered at the meeting, and that the team considered the complainant's concerns at each IEP team meeting, in accordance with 34 CFR §300.324.

Based on the Findings of Facts #17 - #49, the MSDE finds that there was data to support the IEP team's decisions about the need for additional information in order to address the student's health needs arising out of epilepsy, in accordance with 34 CFR §300.324. Therefore, this office does not find that a violation occurred with respect to this aspect of the allegation.

Allegation #12 Prior Written Notice of Decisions Made on July 6, 2020

Written notice must be provided to parents within a reasonable time before the public agency proposes or refuses to initiate or change the identification, evaluation, or educational placement or the provision of a FAPE. This notice includes a description and explanation of the action, the data used as a basis for the action, a description of any other options considered and why they were rejected, a statement that the parents have protection under the procedural safeguards, the means by which a copy of the safeguards can be obtained, and sources to obtain assistance understanding the information provided(34 CFR §300.503).

In this case, the complainant alleges that he was not provided with written notice of the basis of the decision made by the IEP team on July 6, 2020 to develop its own school seizure action plan when the student's private physician had already developed such a plan.

Based on the Findings of Facts #17 - #37, the MSDE finds that the complainant was provided with written notice that includes an explanation of the basis for the decision to develop a school seizure action plan, in accordance with 34 CFR §300.503. Therefore, the MSDE does not find that a violation occurred with respect to this aspect of the allegation.

In this case, the complainant also asserts that the IEP team did not develop the questions that are listed on the PWN document, and therefore, PWN was not provided of the team's decisions about the questions that need to be addressed to the physician.

Based on the Findings of Facts #17 - #37, the MSDE finds that the IEP team discussed the types of questions it had for the student's physician, and agreed to the complainant's request for a list of those questions to provide to the physician, which it provided to him through the PWN document. Therefore, this office does not find that a violation occurred with respect to this aspect of the allegation.

In this case, the complainant further alleges that the IEP team did not determine whether the student requires one-to-one adult support on the bus, as stated in the PWN document.

Based on the Finding of Fact #33, the MSDE finds that the audio recording of the IEP team meeting demonstrates that a decision was made to reject the request for one-to-one support on

the bus, consistent with the PWN document. Therefore, the MSDE does not find that a violation occurred with respect to this aspect of the allegation.

In addition, the complainant alleges that the IEP team did not determine that the current IEP remains appropriate because there was no full review of the IEP at the July 6, 2020 meeting.

The MSDE finds that there is no requirement that an IEP team review the entire IEP in order to decide that it remains appropriate. In addition, based on the Findings of Facts #18 and #33, the MSDE finds that the audio recording of the IEP team meeting documents that the team rejected the complainant's requests for revisions to the IEP, thus deciding that it remains appropriate. Therefore, the MSDE does not find that a violation occurred with respect to this aspect of the allegation.

ALLEGATION #4 PARENTAL CONSENT TO CONDUCT ASSESSMENTS

FINDINGS OF FACTS:

50. The June 9, 2020 IEP states that the IEP team determined the student's present levels of performance based on "classroom observations; informal assessments; classwork." The present levels for performance in reading specifically states that the student "is currently able to read the first 200 sight words from the Dolch sight word list as measured by weekly running records." It also states that "according to Unique learning benchmarks and PCI reading assessments, [the student's] current reading level is beginning second grade."
51. A website for Dolch Sight Words List states that it is a program that teachers can use to provide reading instruction to students (<https://sightwords.com/sight-words/dolch/>). A website for Unique learning system states that it is a program to assist teachers in providing instruction for students with complex learning needs who need additional support to access the general curriculum (<https://www.n26.com/unique-learning-system>). A website for PCI Reading program states that it is a reading program that can be used by teachers in providing reading instruction to students (<https://www.proedinc.com/Products/20385/pci-reading-program-level-one-complete-print-kit.aspx>). All of these products require the teacher to collect and use regular data on the student's performance.
52. A review of the audio recording of the June 9, 2019 IEP team meeting reflects that, in response to the complainant's inquiry, the school staff reported that the present levels of performance were based on information obtained through observations of the student's classroom performance. The school and school system staff explained to the complainant that these informal classroom-based assessments are used within the program to determine how a student is performing in order to inform instructional strategy and not formal testing for which parental consent is required.

DISCUSSION/CONCLUSIONS:

The public agency must obtain informed parental consent prior to conducting any evaluation or reevaluation. However, the process that a teacher or specialist uses to determine appropriate instructional strategies is not considered an evaluation or reevaluation for which parental consent is required (34 CFR §§300.300 and .302).

Special education means specially-designed instruction. Specially-designed instruction means adapting, as appropriate to the needs of a student the content, methodology, or delivery of instruction to address the unique needs of the student (34 CFR §300.39).

In this case, the complainant alleges that assessments were conducted in order to obtain data for present levels of performance during the annual IEP review on June 9, 2020 that required written parental consent, which was not obtained. He asserts that there is no difference between formal assessments and data collection as part of instruction if the same classroom data collection activity is not used with all students.

The MSDE finds that there is no requirement to use the same instructional methods for all students with disabilities and that the IDEA requires that instruction be individualized for students with disabilities.

Based on the Findings of Facts #50 - #52, the MSDE finds that the student's present levels of performance were determined by data collected through the programs used by teachers to provide instruction and not through assessments that require parental consent. Thus, this office finds that consent was not required, in accordance with 34 CFR §300.300, and that a violation did not occur with respect to the allegation.

**ALLEGATION #5 NOTICE OF IEP TEAM PARTICIPANTS AT THE
JUNE 9, 2020 IEP TEAM MEETING**

FINDINGS OF FACTS:

53. A review of the audio recording of the June 9, 2020 IEP team meeting reflects that a PGCPs Compliance Office staff member participated in the IEP team meeting. However, the written notice of the June 9, 2020 IEP team meeting did not include this staff member.
54. A review of the documentation of the student's previous IEP team meetings reflects that the same PGCPs Compliance Office staff member has consistently served on the student's previous IEP team at meetings.
55. A review of the audio recording of the June 9, 2020 IEP team meeting reflects that the PGCPs Compliance Office staff member assisted the complainant in obtaining

information he requested from the school staff by clarifying the questions he posed to them at the meeting. There is no evidence that the participation of the PGCPS Compliance Office staff member negatively impacted the complainant's participation in the meeting.

56. On August 6, 2020, the MSDE issued a Letter of Findings as a result of the investigation of another State complaint filed by the complainant (State complaint #20-137). In that Letter of Findings, the MSDE required the PGCPS to develop a communication protocol to ensure the appropriate provision of documents to the complainant before and after each IEP team meeting.

DISCUSSION/CONCLUSIONS:

In order to ensure parent participation in each IEP team meeting, the public agency must provide parents with notice of the purpose of the meeting and who will be in attendance (34 CFR §300.322). In Maryland, the notice must be in writing and be provided to the parents at least ten (10) days in advance of the meeting (COMAR 13A.05.01.07).

In this case, the complainant alleges that he was not provided with notice that a member of the PGCPS Special Education Compliance Office would be participating in the June 9, 2020 IEP team meeting.

Based on the Finding of Fact #53, the MSDE finds that the notice of the IEP team meeting did not include information that the PGCPS Special Education Compliance staff member would be in attendance, in accordance with 34 CFR §300.322 and COMAR 13A.05.01.07. Therefore, this office finds that a violation occurred with respect to the allegation.

Notwithstanding the violation, based on the Findings of Facts #54 and #55, the MSDE finds that the violation did not negatively impact the complainant's ability to participate in the IEP team meeting and that steps have been taken to ensure that the violation does not recur. Therefore, no additional corrective action is required.

ALLEGATION #6 IEP TEAM PARTICIPANTS – SPECIAL EDUCATION TEACHER OR PROVIDER ON JUNE 9, 2020

FINDINGS OF FACTS:

57. The IEP in effect on June 9, 2020 required the provision of special education instruction from a special education teacher, speech/language pathologist, occupational therapist, school social worker, instructional assistant, and others. It also required related services of speech/language services from a speech/language pathologist. It further required mental health consultation services from a school social worker and occupational therapy consultation services from an occupational therapist.

58. A review of the audio recording of the June 9, 2020 IEP team meeting reflects that an instructional specialist, who is a special education teacher and had been assisting with the provision of special education instruction in the student's class, participated in the meeting. In addition, other special education providers of the student, including the school social worker, the speech/language therapist, and occupational therapist participated.
59. A review of the audio recording of the June 9, 2020 IEP team meeting reflects that at the meeting, the complainant inquired about why the special education teacher assigned to the student's class was not at the meeting. The school staff explained that the teacher was no longer with the school, and that the instructional specialist had been serving as the teacher for the student's class. The instructional specialist was able to answer all of the complainant's questions about the instruction she provided and the student's academic performance.
60. A letter from [REDACTED] to parents, dated May 26, 2020, documents that parents were provided with notice that the teacher who was assigned to the student's class was no longer with the school and that the instructional specialist would be serving as the teacher until the last day of the regular school year on June 12, 2020. An email, dated May 26, 2020 from the school staff to the complainant, documents that this letter was provided to him on that date.

DISCUSSION/CONCLUSIONS:

The public agency must ensure that the IEP team includes at least one (1) special education teacher, or where appropriate, special education provider of the student (34 CFR §300.321).

When promulgating the IDEA regulations, the United States Department of Education, Office of Special Education Programs (OSEP) was requested to provide guidance that a special education provider of the student be allowed to substitute for a special education teacher only when the student does not have a special education teacher. The OSEP responded that a special education teacher may substitute when there is no special education teacher, but that there may be other appropriate circumstances when a special education provider could substitute for a special education teacher, and that these decisions are best left to State and local officials (*Federal Register*, Vol. 71, No. 156, , p. 46670, August 14, 2006).

In this case, the complainant asserts that the student did not have a special education teacher at the time of the June 9, 2020 IEP team meeting, and that, as a result, the IEP team that convened to conduct the annual review of the IEP on June 9, 2020 did not include a special education teacher or provider of the student.

Based on the Findings of Facts #57 - #60, the MSDE finds that the evidence does not support the allegation that the IEP team meeting did not include proper participants, in accordance with 34 CFR §300.321 because the team included a special education teacher and providers of the

student. Therefore, the MSDE does not find that a violation occurred with respect to the allegation.

ALLEGATIONS #7 AND #9

**CONSIDERATION OF PARENT CONCERNS
AND PWN OF DECISIONS MADE ON JUNE 9, 2020**

FINDINGS OF FACTS:

61. A review of the audio recording of the June 9, 2020 IEP team meeting, which was provided by the complainant, reflects that the IEP team conducted the annual review of the IEP on that date. The meeting lasted approximately three (3) hours. The team determined present levels of performance and the school staff explained the data that was used and answered the complainant's questions about how the data was obtained and how instruction was being provided to the student.
62. A review of the audio recording of the June 9, 2020 IEP team meeting reflects that at the meeting, the team discussed proposed annual goals and services to be provided to assist the student in achieving the goals, and the school staff reported on the student's interfering behaviors and the strategies that were effective in addressing those behaviors. The team considered the information and concerns about the student's education program that were raised by the complainant and the student's mother. There were disagreements among the IEP team members about the student's interfering behaviors (see Allegations #1, #2, and #13 above). The IEP team accepted some of the requests of the complainant and the student's mother, rejected some of their requests, and decided that additional information was needed to make decisions about other requests.
63. A review of the audio recording of the June 9, 2020 IEP team meeting reflects that, at the meeting, the complainant expressed concern that he had not been provided with notice of all of the meeting participants and that the school system staff promised to look into the matter and provide him with an explanation for why they were not included on the meeting invitation.²
64. A review of the audio recording of the June 9, 2020 IEP team meeting reflects that the occupational therapist reported on the consultative services being provided to the student and the complainant reported that, in order to address his ongoing disagreement with the IEP team's decision that services be consultative instead of direct, he had requested an Independent Educational Evaluation (IEE). The complainant further reported that he had been granted an IEE at public expense in this area in order to address his concerns.
65. A review of the audio recording of the June 9, 2020 IEP team meeting reflects that when the team attempted to begin a discussion of the assessments in which the student will participate, the complainant requested that the discussion be delayed. The PWN

² An email from the school staff to the complainant, dated July 1, 2020, documents that the complainant was informed that the school staff inadvertently left off names from the meeting invitation.

document states that an Alternate Assessment eligibility tool would be completed and sent to the parents for review.

66. A review of the audio recording of the June 9, 2020 IEP team meeting, the written summary of the meeting, and the IEP that was developed document that the complainant was provided with information in writing about the actions that were proposed and refused with respect to the student's education program. The documents include descriptions of the actions, the options considered, the data used in making the decisions, a statement that parents have protections under the procedural safeguards, and information about sources for parents to obtain assistance understanding these protections. Examples include:

A. The complainant and the school-based members of the team disagreed about whether the student is smearing his feces on a regular basis. The IEP team decided that the BIP would be revised based on information from the school staff that impulsivity/distractibility, food seeking, and aggression were interfering behaviors. It also decided that additional data would be collected as requested by the complainant to determine whether feces smearing needs to be added once schools reopen. The team decided that a new Functional Behavioral Assessment (FBA) will be conducted in order to collect the data needed to revise the BIP when schools reopen and that the parents would be provided with a form to provide consent for the FBA. The team decided that, in the meantime, toileting needs, including the need to prevent him from touching his feces, would be included in the IEP supplementary aids and services (See Allegation #1 above).

The PWN document states that "the IEP team agrees that [the student] would benefit from modifying the Behavior Intervention to address current behavioral needs." It further states that "the team has not observed eloping and disrobing in the school setting so this was removed from the BIP," and that "toileting needs are addressed through the toileting monitoring plan included in the supplementary aids and supports." It also states that the parents were being provided with a consent form so that a FBA can be conducted when schools reopen for purposes of updating the BIP.

The IEP states that a BIP is required due to interfering behaviors of impulsivity/distractibility, food seeking, and aggression. The IEP also states that the student will be provided with monitoring and assistance with toileting and that as he demonstrates the ability to complete bathroom sequences and procedures without maladaptive behaviors, staff support will fade to allow bathroom independence. It states that "to avoid [the student] touching his feces, a drape may be placed over [his] lap and staff can prompt [him] to clasp hands together."

B. The IEP team discussed the need to revise transition activities to those that can be implemented virtually instead of in the community due to the COVID-19 pandemic. The complainant expressed concern that once schools reopen, these

services again focus on activities in the community. He stated that he believes that transition activities should include independent toileting, as was currently included on the IEP. The school-based members of the team assured the complainant that once schools reopen and face-to-face instruction resumes, they will revisit the transition activities. The team decided that the IEP addressed the need to assist the student with becoming independent with toileting through the supplementary aids and services.

The IEP states that the student will be provided with toileting assistance, and that as he “demonstrates the ability to complete bathroom sequences and procedures without maladaptive behaviors, staff support will fade to allow for bathroom independence.” The PWN states that “toileting needs are addressed through the toileting monitoring plan included in the supplementary aids and supports.”

- C. The IEP team discussed that the complainant reported that the student is diagnosed with epilepsy and needs additional educational supports and the administration of medication. The school system staff explained that additional information and documentation was needed from the student’s physician to administer medication and for the team to consider any additional educational supports being recommended. The school system staff clarified that the IEP team did not have to reconvene to administer medication upon receipt of documentation of need from the physician and written consent from the parents.

The PWN document states the following:

The parent provided an email dated June 9, 2020 noting the student has a new diagnosis of epilepsy. The team acknowledged receipt of the email which is titled “parent input” however the school system does not have documentation from a physician to consider the specific changes the parent requested in that email, specifically increased one to one adult supervision from leaving home to school and returning to home...including but not limited to, during transportation, field trips and transition activities;” “All staff who provide services to [the student] should be trained by a medical profession to detect seizures and associated symptoms;” “... to follow the student specific emergency procedures protocol...;” “The emergency protocol include, but not limited to, administering medicine, providing first aid for injuries and calling 911.”

The PWN document states “the parent is not in agreement with this determination,” and the reasons why the complainant’s requests were rejected as follows:

The school team needs additional physician documentation and information and may require input from PGCPHS Health Services to consider the parents requests and determine what, if any, supports are

needed. The school team is trained in CPR and First Aide and able to respond to emergencies and there is a school nurse to staff. The parent will receive the form to be completed by the medical provider in order for students to receive medication at school.

The PWN document states that the documentation used as a basis for the team's decisions included the current IEP, present levels, functioning levels, attendance, behavioral data, teacher input, parent input, and input from related service providers.

DISCUSSION/CONCLUSIONS:

Allegation #7 Consideration of Information and Concerns of the Parents on June 9, 2020

As stated above, in developing each student's IEP, the IEP team must consider the academic, developmental, and functional needs of the student and the concerns of the parents for enhancing the education of the student (34 CFR §300.324).

In this case, the complainant alleges that the IEP team did not consider all of the concerns raised by the parents at the IEP team meeting held on June 9, 2020.

Based on the Findings of Facts #61 - #66, the MSDE finds that the PGCPS ensured that the IEP team considered the information and concerns of the complainant and the student's mother at the June 9, 2020 IEP team meeting, in accordance with 34 CFR §300.324. Thus, this office does not find that a violation occurred with respect to the allegation.

Allegation #9 PWN of Decisions Made on June 9, 2020

As stated above, written notice must be given to parents a reasonable time before the public agency proposes or refuses to initiate or change the identification, evaluation, or educational placement of a student or the provision of a FAPE to the student. While there is no requirement to use a particular document or documents to provide this notice, the public agency must ensure that the parents are provided with written information that describes and explains the actions taken, identifies the data used as a basis for the actions taken, describes any other options considered, and informs parents of protections under the procedural safeguards and sources for obtaining assistance understanding these protections (34 CFR §300.503 and *Federal Register*, Vol. 71, No. 156, p. 46691, August 14, 2006).

The OSEP has explained that the purpose of the written notice is to ensure that parents have enough time to fully consider the action and respond to it before it is implemented (*Letter to Chandler*, 59 IDELR 110, 2012). The Courts have held that the written notice must have sufficient detail to allow parents to participate in the educational decision-making process (*Smith v. Squillacote*, 19 IDELR 265 (D.D.C. 1992)). However, there is no requirement to

provide parents with a verbatim transcript of discussions and decisions that occur at the IEP team meeting that do not impact a FAPE (*Federal Register*, Vol. 71, No. 156, August 14, 2006, p. 46691).

The IDEA requires the public agency to make whatever action is necessary to ensure that parents understand the proceedings of the IEP team meeting (34 CFR §300.322). The OSEP and Courts have indicated that the use of audio recordings of IEP team meetings may assist parents in understanding the IEP process, which allows them to go over the meeting again and again until they are absolutely clear about what the IEP will entail (*Letter to Anonymous*, 40 IDELR 70, 2003 and *E.H. v. Tirozzi*, 16 IDELR 787 (D.Conn. 1990)). If the school system maintains an audio recording of an IEP team meeting, it becomes part of the student's educational record (34 CFR §99.10).

In this case, the complainant alleges that he was not informed of every proposal and refusal made at the June 9, 2020 IEP team meeting. He asserts that PWN must be provided for every discussion the IEP team had, such as the school system's report that another IEP team meeting was not needed to administer medicine once a physician's order was received and the method of data collection for identifying interfering behaviors when schools reopen. He also asserts that the PWN should have contained a statement about the legal requirements for determining the assessments in which the student will participate, i.e., that the IEP team must hold a discussion of the matter once he returns the Alternate Assessment eligibility tool. He further asserts that the PWN must be provided through one (1) document, and that because the PGCPS issued a document entitled "PWN," it could not also use the IEP document to inform parents of the decisions made.

The MSDE finds that the PGCPS was not required to provide written notice of every matter discussed by the IEP team. This includes information about the legal requirements for which determinations must be made through discussion of an IEP team and the method for data collection when schools reopen. The MSDE also finds that there is no prohibition against using more than one (1) document when informing parents of the decisions made by the IEP team.

Based on the Findings of Facts #61 - #66, the MSDE finds that the complainant was provided with PWN of the IEP team's decisions and has sufficient information about those decisions to exercise his rights to dispute those decisions, in accordance with 34 CFR §300.503. Therefore, this office does not find that a violation occurred with respect to this allegation.

**ALLEGATION #8 INCLUSION OF PHYSICAL RESTRAINT AND
SECLUSION ON THE IEP ON JUNE 9, 2020**

FINDINGS OF FACTS:

67. A review of the June 9, 2020 IEP and the audio recording of the meeting reflects that the IEP team decided that the behavioral interventions of seclusion and physical restraint are required for the student.
68. The June 9, 2020 IEP states that the IEP team decided that the student requires a BIP. It also states that on June 28, 2020, the complainant provided written refusal for the use of seclusion and physical restraint as part of the BIP.
69. While the June 9, 2020 IEP does not include seclusion or physical restraint in the supplementary aids and services to be used in response to the student's behavior, the June 9, 2020 BIP does include these interventions. The BIP describes the less intrusive, nonphysical interventions to be used to respond to the student's behavior before these interventions are utilized.
70. The Seizure Action Plan form developed by the Epilepsy Foundation, which the complainant shared with the school staff on July 5, 2020, contains a list of steps to be taken to provide first aid for anyone while experiencing a seizure. This list includes the statement "Do not restrain." There is no documentation that reflects that the use of seclusion is contraindicated for the student and no other documentation that addresses the use of physical restraint.

DISCUSSION/CONCLUSIONS:

The public agency must ensure that physical restraint and seclusion are used only when there an emergency situation in which it was necessary in order to protect the student or others from imminent, serious, physical harm after less intrusive, nonphysical interventions have failed or been determined inappropriate (COMAR 13A.08.04.05).

Once physical restraint or seclusion has been used or school personnel have made a student-specific determination that it may be needed for such a situation, these interventions may be included in the IEP or BIP to address a student's behavior in an emergency situation (COMAR 13A.08.04.05).

However, in order to include such interventions in the IEP or BIP, the school personnel must review available data to identify any contraindications based on medical history or past trauma, including consultation with medical or mental health professions, as appropriate. The school personnel must also identify the less intrusive, nonphysical interventions that will be used to

respond to the student's behavior until these interventions are used in an emergency situation, and must obtain written consent from the parent (COMAR 13A.08.04.05).

In this case, the complainant alleges that physical restraint and seclusion were included in the student's IEP and BIP without the IEP team determining that less intrusive, nonphysical interventions have failed or been determined inappropriate requiring the use of the interventions.

The MSDE finds that physical restraint and seclusion may not be used, under any circumstances, unless less intrusive, nonphysical interventions have failed or been determine inappropriate.

In addition to the general requirement for the use of seclusion and physical restraint, in order to include these interventions on the IEP or BIP, the IEP team must determine the less intrusive, nonphysical interventions that will be used to respond to the student's behavior until these interventions are used in an emergency situation. Therefore, the regulations require that in order for such interventions to be included on the IEP or BIP, there must be less intrusive, nonphysical interventions that will be used first. The IEP team is not permitted to determine that there are no appropriate interventions to attempt first if it places physical restraint or seclusion on the IEP or BIP.

Based on the Findings of Facts #67 and #69, the MSDE finds that the IEP team made a student-specific decision that seclusion and physical restraint are needed, and the BIP describes the interventions to be attempted before use of seclusion and physical restraint, in accordance with COMAR 13A.08.04.05. Therefore, this office does not find that a violation occurred with respect to this aspect of the allegation.

The complainant also alleges that physical restraint and seclusion were included in the student's IEP and BIP without the school staff having reviewed available data to identify the contraindications of the use of this intervention based on medical history or past trauma.

Based on the Finding of Fact #70, the MSDE finds that there was no available documentation of contraindications to the use of behavioral interventions for the school staff to consider when the interventions were included on the June 9, 2020 BIP, in accordance with COMAR 13A.08.04.05. Therefore, this office does not find that a violation occurred with respect to this aspect of the allegation.

The complainant further alleges that physical restraint and seclusion were included in the student's IEP and BIP despite his refusal to provide written consent.

Based on the Findings of Facts #68 and #69, the MSDE finds that the behavioral interventions were included on the June 9, 2020 BIP without obtaining consent for their use with the student. Therefore, this office finds that a violation occurred with respect to this aspect of the allegation.

**ALLEGATION #10 NOTICE OF IEP TEAM PARTICIPANTS AT THE
JULY 6, 2020 IEP TEAM MEETING**

FINDINGS OF FACTS:

71. The written invitation to the July 6, 2020 IEP team meeting, dated June 22, 2020, states that a health services representative, nurse manager, transportation supervisor, and special education teacher were expected to participate in the meeting.
72. An email from the school staff to the complainant, dated June 24, 2020, documents that the meeting invitation was provided to him on that date.
73. An email from the complainant to the school staff, dated July 1, 2020, documents that on that date, the complainant asked for the names of the individuals who would be serving in the roles indicated on the meeting notice.
74. An email from the school staff to the complainant, dated July 1, 2020, documents that, on the same date as his request, the school staff provided the complainant with the names of the individuals who would be serving in the roles indicated on the meeting notice on the same date that he requested the information.

DISCUSSION/CONCLUSIONS:

As stated above, the public agency must ensure that parents are provided with notice of who will be in attendance at each IEP team meeting (34 CFR §300.322). In Maryland, the notice must be in writing and be provided to the parents at least ten (10) days in advance of the meeting (COMAR 13A.05.01.07).

The OSEP has issued guidance explaining that as long as the notice identifies individuals by position, it is sufficient to provide parents with information about who will be in attendance at an IEP team meeting (*Letter to Livingston*, 23 IDELR 564 (1995)).

In this case, the complainant alleges that he was not provided with notice of the names of the health services representative, nurse manager, transportation supervisor or special education teacher who would be participating in the July 6, 2020 IEP team meeting within the required timeline.

Based on the Findings of Facts #71 - #74, the MSDE finds that the documentation does not support the allegation. Based on those Findings of Facts, the MSDE finds that while the complainant was not provided with the names of the individuals serving in each role within ten (10) days of the meeting, he was provided with notice that identifies the individuals by position within the required timeline, in accordance with 34 CFR §300.322 and COMAR 13A.05.01.07. Therefore, this office does not find that a violation occurred with respect to the allegation.

ALLEGATION #11

**IEP TEAM PARTICIPANTS – SPECIAL EDUCATION
TEACHER OR PROVIDER ON JULY 6, 2020**

FINDINGS OF FACTS:

75. The IEP in effect on July 6, 2020 required the provision of special education instruction from a special education teacher or instructional assistant and speech/language services from a speech/language pathologist. It also required social work consultation by a school social worker, and an occupational therapy consultation from an occupational therapist.
76. A letter from [REDACTED] to parents, dated May 26, 2020, documents that parents were provided with notice that the teacher who was originally assigned to the student's class was no longer with the school and that the instructional specialist was serving as the teacher until the last day of school on June 12, 2020. The letter identified another teacher who would begin providing instruction on July 1, 2020.
77. A review of the audio recording of the July 6, 2020 IEP team meeting and meeting invitation reflects that the newly assigned teacher who was to begin providing special education instruction on July 1, 2020, did not participate in the meeting. However, a special education teacher who served as the student's teacher during the 2019-2020 school year, participated in the meeting, along with the student's related speech/language service provider and the providers of the social work and occupational therapy consultative services.

DISCUSSION/CONCLUSIONS:

As stated above, the public agency must ensure that the IEP team includes at least one (1) special education teacher, or where appropriate, special education provider of the student (34 CFR §300.321). In promulgating the IDEA regulations, the OSEP explained that the party (parents or public agency) who invites an individual to be a member of the IEP team determines the knowledge or special expertise of the individual. The OSEP refused a request to require a student's future teacher to attend an end-of-year IEP team meeting, indicating that decisions as to which teachers are members of the team are best left up to State and local officials, based on the needs of the student (*Federal Register*, Vol. 71, No. 156, pp. 46669-46670, August 14, 2006).

In this case, the complainant alleges that the PGCPS was required to ensure that the newly assigned special education teacher, who had no experience with the student, was required to participate in the IEP team meeting.

Based on the Findings of Facts #75 - #77, the MSDE disagrees, and finds that the evidence does not support the allegation that the IEP team meeting did not include proper participants, in accordance with 34 CFR §300.321 because the team included a special education teacher and providers of the student who were knowledgeable about the student. Therefore, the MSDE does not find that a violation occurred with respect to the allegation.

ALLEGATION #14

BUS STAFF TRAINING

FINDINGS OF FACTS:

78. Since July 16, 2019, the IEP has required that the bus driver and aide be trained on specific strategies to support a safe and positive bus ride for the student. The IEP states that these staff members are to be trained prior to the beginning of a school year and when staffing changes arise.
79. The PGCPS acknowledges that there have been changes in the bus staffing and that there is no documentation of training when this occurred.
80. There are no reports of bus incidents after July 2019.

DISCUSSION/CONCLUSIONS:

As stated above, the public agency must ensure that decisions made by the IEP team regarding the student's education are implemented, in accordance with 34 CFR §§300.101 and .323.

In this case, the complainant alleges that the PGCPS did not ensure that new bus staff were trained on the student's needs prior to working with the student, as agreed to at the July 16, 2019 IEP team meeting.

Based on the Findings of Facts #78 and #79, the MSDE finds that there is no documentation that new bus staff were provided with training on the student's needs as required by the IEP, in accordance with 34 CFR §§300.101 and .323. Therefore, the MSDE finds that a violation occurred with respect to the allegation.

Notwithstanding the violation, based on the Finding of Fact #80, the MSDE finds that the violation did not have a negative impact on the student's ability to benefit from the education program.

ALLEGATION #15

ACCESS TO RECORDS

FINDINGS OF FACTS:

81. On June 29, 2020, three (3) business days prior to an IEP team meeting scheduled for July 6, 2020, the complainant sent the school and school system staff a request for access to documents in the educational record. The documents for which the complainant requested access included:
 - a. Documentation of participants at the June 9, 2020 IEP team meeting;
 - b. Documentation of "the matters discussed and/or decisions made" at the June 9, 2020 IEP team meeting, not including the IEP or PWN;

- c. Documentation of training to the student's transportation service providers from June 1, 2019 to June 28, 2020;
 - d. Incident reports from July 1, 2019 to March 31, 2020;
 - e. Invitations to transition agency representatives to a June 9, 2020 IEP team meeting;
 - f. Responses from transition agency representatives to invitations to a June 9, 2020 IEP team meeting;
 - g. IEP, dated April 11, 2019;
 - h. IEP, dated June 11, 2019; and
 - i. IEP, dated July 17, 2019.
82. The July 6, 2020 IEP team meeting began at 9:00 a.m.
83. On July 6, 2020, at 1:29 p.m. and 1:34 p.m., the PGCPS provided the complainant with copies of the documents requested on June 29, 2020.
84. On August 6, 2020, the MSDE issued a Letter of Findings as a result of the investigation of another State complaint filed by the complainant (State complaint #20-137). In that Letter of Findings, the MSDE required the PGCPS to develop a communication protocol to ensure timely responses to requests for access to the record.

DISCUSSION/CONCLUSIONS:

The public agency must permit parents to inspect and review the educational record without unnecessary delay and before any meeting regarding an IEP, and in no case more than forty-five (45) days after the request is made (34 CFR §.300.613).

In this case, the complainant alleges that he was not provided with access to documents requested on June 29, 2020 prior to an IEP team meeting held on July 6, 2020.

Based on the Findings of Facts #81 - #83, the MSDE finds that the complainant was provided with access to requested documents without unnecessary delay, but not prior to the July 6, 2020 IEP team meeting, in accordance with 34 CFR §300.613. Therefore, the MSDE is required to find that a violation occurred with respect to the allegation.

Notwithstanding the violation, based on the Finding of Fact #84, the MSDE finds that corrective action has already been required to ensure the future compliance with the requirement to provide timely access to the record. Therefore, no additional system-based action is required.

CORRECTIVE ACTIONS/TIMELINES:

The IDEA requires that State complaint procedures include those for effective implementation of the decisions made as a result of a State complaint investigation,

including technical assistance activities, negotiations, and corrective actions to achieve compliance (34 CFR §300.152). Accordingly, the MSDE requires the public agency to provide documentation of the completion of the corrective actions listed below³

This office will follow up with the public agency to ensure that it completes the required action consistent with the MSDE Special Education State Complaint Resolution Procedures. If the public agency anticipates that the timeframe below may not be met, or if any of the parties seeks technical assistance, they should contact Dr. Nancy Birenbaum, Compliance Specialist, Family Support and Dispute Resolution Branch, MSDE, to ensure the effective implementation of the action.⁴ Dr. Birenbaum can be reached at (410) 767-7770.

The MSDE requires the PGCPS to provide documentation that the IEP team has addressed the student's need for extra clothing at school and considered any concerns of the complainant since receiving the requested documents on July 6, 2020. The MSDE also requires the PGCPS to provide documentation that the IEP team has removed the use of seclusion and physical restraint as interventions to be used with the student in the BIP.

The MSDE also requires the PGCPS to provide documentation that a plan has been developed for the PGCPS Transportation Office staff to notify the PGCPS Nonpublic and Compliance Offices staff of any change in transportation providers for the student and for the school system to ensure that training occurs for new bus staff, as required by the IEP, and is documented.

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.

The parties maintain the right to request mediation or to file a due process complaint, if they disagree with the identification, evaluation, placement, or provision of a FAPE for the student,

³ 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.

⁴ 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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September 10, 2020
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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

MEF/am

c: Monica Goldson
Barbara Vandyke
Kerry Morrison
Gail Viens
Dori Wilson
Anita Mandis
Nancy Birenbaum