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State Superintendent of Schools

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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: #20-137

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 June 11, 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:

IEP Development

1. The PGCPS did not ensure that the Individualized Education Program (IEP) team considered the results of the most recent evaluation, specifically, information about the student's adaptive physical education and gross motor skills, when reviewing and revising the IEP on June 11, 2019, in accordance with 34 CFR §300.324.

2. The PGCPS did not ensure that the IEP team that convened on June 11, 2019 had participation from a representative who was knowledgeable about the availability of transportation resources of the public agency, in accordance with 34 CFR §300.321.
3. The PGCPS did not ensure that the IEP team determined supplementary aids and services needed for the student to participate in extracurricular and nonacademic activities with nondisabled students to the maximum extent appropriate to his needs since June 11, 2019, in accordance with 34 CFR §§ 300.117, .320, and .324.
4. The PGCPS did not ensure that the IEP team considered the student's functional, including safety needs, and concerns of the parents for enhancing the education of the student on July 16, 2019, in accordance with 34 CFR §300.324.
5. The PGCPS did not ensure that the IEP team that convened on July 16, 2019 included a special education teacher or provider of the student, in accordance with 34 CFR§300.321.
6. The PGCPS did not ensure that a representative of the nonpublic separate special education school in which the student is placed participated in an IEP team meeting prior to referral and placement at the school, in accordance with 34 CFR §300.325.
7. The PGCPS did not ensure the opportunity for parent participation in the IEP team meeting held on February 26, 2020, in accordance with 34 CFR §§300.321 and .322 and COMAR 13A.05.01.
8. The PGCPS did not provide Prior Written Notice (PWN) of the decisions made on February 26, 2020, in accordance with 34 CFR §300.503.

IEP Implementation

9. The PGCPS did not ensure that the parents were encouraged to introduce the student to extracurricular activities in his home environment within his ability, as determined by the IEP team since June 11, 2019, in accordance with 34 CFR §§ 300.101, .107, and .323.
10. The PGCPS did not ensure that the Behavioral Intervention Plan (BIP) was implemented from July 1, 2019 until April 10, 2020, in accordance with 34 CFR §§ 300.101. and .323.
11. The PGCPS did not ensure that all transition activities were implemented within one (1) year of the development of the April 11, 2019 IEP, in accordance with 34 CFR §§ 300.101. and .323.
12. The PGCPS did not ensure that the student's therapeutic behavioral aide was informed of his responsibility for providing the student with toileting assistance in accordance with the IEP from July 1, 2019 until April 10, 2020, in accordance with 34 CFR §300.323.

13. The PGCPS did not ensure that parent communication was provided as required by the IEP from July 1, 2019 until April 10, 2020, in accordance with 34 CFR §§ 300.101. and .323.
14. The PGCPS did not ensure the provision of mental health consultation required by the IEP from July 1, 2019 until April 10, 2020, in accordance with 34 CFR §§ 300.101. and .323.
15. The PGCPS did not ensure that speech/language services were provided in accordance with the IEP from July 1, 2019 until April 10, 2020, in accordance with 34 CFR §§ 300.101. and .323.
16. The PGCPS did not ensure that the bus attendant was seated in close proximity to the student on the bus on July 3, 2019, as required by the IEP, in accordance with 34 CFR §§ 300.101. and .323.
17. The PGCPS did not ensure that proper procedures were followed when using physical restraint with the student on July 10, 2019, in accordance with COMAR 13A.08.04.

Parental Rights

18. The PGCPS did not provide the IEP within five (5) business days of the July 16, 2019 IEP team meeting, in accordance with COMAR 13A.05.01.
19. The PGCPS has not ensured access to the educational record in response to requests made on July 8, 11, and 13, 2019, September 18, 2019, and November 18, 2019, in accordance with 34 CFR §300.613.
20. The PGCPS has not provided the opportunity for a hearing to contest the accuracy of the educational record in response to a request made on July 17, 2019, in accordance with 34 CFR §300.619.

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.

At the start of the time period covered by this investigation, the student attended [REDACTED] a nonpublic, separate, special education school, where he was placed by the PGCPS. The student attended [REDACTED] a nonpublic, separate, special education school, as a result of a change in educational placement, from July 1, 2019 until the Statewide closure of schools as a result of the national COVID-19 pandemic.

**ALLEGATION #1 CONSIDERATION OF RESULTS OF MOST RECENT
EVALUATION ON JUNE 11, 2019**

FINDINGS OF FACTS:

1. On June 11, 2019, while the student was placed at [REDACTED] the IEP team met to consider his need for Extended School Year (ESY) services. The documentation in the educational record reflects that the annual review of the IEP took place previously on April 11, 2019.
2. A review of the audio recording of the June 11, 2019 IEP team meeting reflects that the team considered the required factors and determined that the student needs ESY services. The IEP team also discussed the student's transportation needs in preparation for the provision of ESY services. The team reviewed the student's IEP goals and his progress towards achievement of those goals, and decided that all of them would be addressed through ESY services.
3. The student's educational record contains a November 1, 2012 report of an assessment of the student's adaptive physical education and gross motor skills needs. It also reflects that the last three (3) year reevaluation was conducted on May 10, 2018, that additional reevaluations were conducted on January 22, 2019 and April 11 2019, and that the 2012 assessment was not used in conducting these reevaluations.
4. A review of the documentation and audio recording of the June 11, 2019 IEP team meeting reflects that none of the student's IEP goals address adaptive physical education or gross motor skills, and no needs were identified for the student in these areas at the June 11, 2019 IEP team meeting.

DISCUSSION/CONCLUSIONS:

In developing each student's IEP, the IEP team must consider data including the results of the initial or most recent evaluation. The IEP team must review the IEP not less than annually to ensure that it is appropriate. In addition, the IEP team must review and revise the IEP, as appropriate, to address any lack of progress, results of the latest reevaluation, information about the student, or the student's anticipated needs (34 CFR §300.324).

At least annually, the IEP team must determine whether each student requires ESY services. When making an ESY decision, the IEP team must consider the following:

1. Whether the IEP includes goals related to critical life skills;
2. Whether there is a likelihood of substantial regression of critical life skills caused by a break in the school year;
3. The student's degree of progress towards mastery of the annual IEP goals related to critical life skills;
4. The presence of emerging skills or breakthrough opportunities;

5. Interfering behaviors;
6. The nature and severity of the disability; and
7. Special circumstances.

Following the consideration of these factors, the IEP team must determine whether the benefits the student gains during the regular school year will be significantly jeopardized if the student is not provided with an education program during a normal break in the regular school year. There is no requirement for the entire IEP to be reviewed each time an ESY determination is made (COMAR 13A.05.01.08).

In this case, the complainant alleges that, when the IEP team convened on June 11, 2019, it did not consider the most recent evaluation data, which he asserts includes the results of a 2012 assessment of the student's adapted physical education and gross motor development.

Based on the Findings of Facts #1 - #4, the MSDE finds that the evidence does not support the allegation that the 2012 data was part of the most recent evaluation and there was no requirement for the IEP team to consider that data when making the ESY decision on June 11, 2019, in accordance with 34 CFR §300.324. Therefore, this office does not find that a violation occurred with respect to the allegation. If the complainant believes that the IEP should address needs in the areas of adaptive physical education and gross motor skills, he maintains the right to request an IEP team meeting to consider his concerns.

ALLEGATION #2 IEP TEAM PARTICIPANTS – PUBLIC AGENCY REPRESENTATIVE ON JUNE 11, 2019

FINDINGS OF FACTS:

5. A review of the documentation and audio recording of the June 11, 2019 IEP team meeting reflects that purpose of the meeting was to determine the student's need for ESY services. There was participation on the IEP team by a representative of the public agency from the PGCPS Nonpublic Office. Following the ESY discussion, the complainant raised concerns about transportation. The team discussed the safety vest and back up safety vest that would be used for the student during transportation. The staff from [REDACTED] and the PGCPS Nonpublic Office reported that they had consulted with [REDACTED] the school to which the student was assigned to attend beginning July 1, 2019, about the student's needs, including transportation needs. [REDACTED] staff reported that they had discussed use of the safety vest with [REDACTED] staff.
6. A review of the documentation and audio recording of the June 11, 2019 IEP team meeting reflects that the complainant expressed concern that new bus staff be trained on the student's specific transportation needs prior to the start of ESY services on July 1, 2019. The IEP team agreed to make sure that this occurred. However, the complainant wanted the team to commit to a specific date by which it would occur. The

school-based members of the team explained that the bus staff receive general training the day before services start, and that training specific to the student's needs could also be provided at that time. The complainant expressed concern that this was not early enough and that he wanted a separate training on the student's needs. The team rejected the request, explaining that the bus staff had not yet been assigned to specific bus routes, and that training would occur as soon as possible after they were assigned and before services were initiated.

DISCUSSION/CONCLUSIONS:

The public agency must ensure that the IEP team includes a representative of the public agency who is knowledgeable about the availability of resources of the public agency (34 CFR §300.321). In promulgating the IDEA regulations, the United States Department of Education, Office of Special Education Programs (OSEP) explained that the purpose of this requirement is to ensure that the IEP team includes a representative with the authority to commit agency resources and be able to ensure that whatever services are described in the IEP will actually be provided (*Federal Register*, Vol. 71, No. 156, August 14, 2006, p. 46670).

In this case, the complainant alleges that the PGCPs did not ensure that the IEP team that convened on June 11, 2019 included participation by a representative of the public agency who was knowledgeable about the availability of transportation resources.

Based on the Findings of Facts #5 and #6, the MSDE finds that the school system's inability to provide a specific date for training bus staff other than that it would be prior to the provision of services does not demonstrate that the public agency staff lacked knowledge about the availability of transportation resources. Based on those Findings of Facts, the MSDE find that the IEP team included participants who could address the concerns raised by the complainant about transportation during the June 11, 2019 IEP team meeting, in accordance with 34 CFR §§300.321 and .324. Therefore, this office does not find that a violation occurred with respect to the allegation.

ALLEGATION #3 PARTICIPATION IN NONACADEMIC AND EXTRACURRICULAR ACTIVITIES SINCE JUNE 11, 2019

FINDINGS OF FACTS:

7. A review of the documentation and audio recording of the June 11, 2019 IEP team meeting reflects that the team considered the student's need for ESY services and his transportation needs. The IEP team did not make a placement decision at that meeting. The documentation in the educational record reflects that the annual review of the IEP took place previously on April 11, 2019, prior to the time period that can be addressed by this investigation.
8. A review of the documentation and audio recording of the next IEP team meeting held on July 16, 2019 reflects that, at that meeting, the IEP team considered the complainant's

concerns about the student's transportation needs, but did not make a placement decision at that meeting.

9. A review of the documentation of the next IEP team meeting held on June 9, 2020 reflects that the IEP team at [REDACTED] conducted the annual IEP review at that time. The documentation of that meeting reflects that the team considered the student's need for "significant supervision, modifications and accommodations," and determined that the LRE in which he can receive special education instruction and participate in extracurricular activities remains a nonpublic separate special education school. The documentation reflects that the team decided that, due to the student's needs, he cannot successfully participate in less restrictive environments even with the provision of supplementary aids and services, either at [REDACTED] or in a public school setting.

DISCUSSION/CONCLUSIONS:

The public agency must take steps, including the provision of supplementary aids and services, to provide nonacademic and extracurricular services in the manner necessary to afford students with disabilities an equal opportunity for participation in those services and activities. These activities may include counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the public agency, referrals to agencies that provide assistance to individuals with disabilities, and employment of students (34 CFR §300.107).

The public agency must ensure that, to the maximum extent appropriate, students, including those in public or private institutions, are educated with nondisabled students. Removal of students with disabilities from the regular education environment may occur only if the nature or severity of the disability is such that education in the regular education environment with the provision of supplementary aids and services cannot be achieved satisfactorily. This is the requirement to implement the IEP in the Least Restrictive Environment (LRE). The public agency must ensure that the IEP team includes in the IEP an explanation of the extent, if any, to which the student will not participate with nondisabled students in such activities (34 CFR §§300.114 and .320).

Likewise, in providing or arranging for the provision of nonacademic and extracurricular services and activities, including meals and recess periods, the public agency must ensure that each student with a disability participates with nondisabled students to the maximum extent appropriate to the needs of the student consistent with the LRE requirements (34 CFR §300.117).

In promulgating the regulations, the OSEP explained that, while the IDEA places a strong preference for educating students with disabilities with nondisabled students in regular education settings, such a placement is not appropriate for every student with a disability. If the needs of a student with a disability cannot be met in a regular education setting with the provision of supplementary aids and services, that setting may not be the LRE in which the IEP can be implemented (*Federal Register*, Vol. 71, No. 156, August 14, 2006, p. 46589).

In this case, the complainant asserts that, since the student has been attending a nonpublic separate special education school that is located closer to public schools within the school system than his previous nonpublic school, there is an increased availability of opportunities for participation in nonacademic and extracurricular activities with nondisabled students in a public school setting. He alleges that the PGCPS did not ensure that the IEP team considered the increased availability of such opportunities when determining the placement in which the student will receive these services.

Based on the Findings of Facts #7 - #9, the MSDE finds that the IEP team considered the required factors when making the educational placement determination in June 2020, in accordance with 34 CFR §§300.101, .114, .117 and .320, and that the availability of activities involving nondisabled students is not a factor in determining the LRE in which a student can participate in such activities. Therefore, this office does not find that a violation occurred with respect to the allegation.

ALLEGATION #4 ADDRESSING STUDENT NEEDS AND PARENTS' CONCERNS ON JULY 16, 2019

FINDINGS OF FACTS:

10. The documentation and a review of the audio recording of a July 16, 2019 IEP team meeting reflects that the team met at the complainant's request to address his concerns about the student's transportation needs. The team discussed that, since the start of school on July 1, 2019, the student had experienced bowel movements on the bus and engaged in smearing feces on the windows, seats, and himself. The complainant requested that a bus aide be assigned to work exclusively with the student on the bus on a one-on-one basis, in addition to the bus aide already assigned to the bus to prevent the student from touching his feces when he has bowel movements on the bus.
11. The documentation and a review of the audio recording of the July 16, 2019 IEP team meeting reflects that the school staff reported that the incidents occurred after the bus arrived at school. They reported that on one (1) of the occasions, there was a significant wait time to get off the bus, which contributed to the incident. The school staff reported that they had implemented a plan to adjust the bus arrival time and have the bus attendant immediately take the student off the bus to greet the school staff (the plan). The school staff further reported that on another one (1) of the occasions, the student's bowel movement was so large that it started coming out of his pants, and that the student did not pull it out of his pants. The school staff indicated that an additional bus attendant could not prevent that from happening
12. The documentation and a review of the audio recording of the July 16, 2019 IEP team meeting reflects that the complainant indicated that he understands that the student will have accidental bowel movements and that his concern is not that these occur, but that the student be provided with the same level of adult assistance on the bus as he is in the school building when it does occur, including assistance with keeping him from touching

- his feces. The complainant expressed concern about the health risks of the student being able to smear feces all over himself and the bus and he expressed fear that the student may have a bowel movement and begin to throw feces while the bus is in motion.
13. The documentation and a review of the audio recording of the July 16, 2019 IEP team meeting reflects that the school-based members of the team indicated that, because the student normally sleeps during the bus ride, he does not need the same amount of personnel on the bus that he needs in the classroom. The school-based members of the team reported that there are no other students on the student's bus with behavior issues that require the level of adult support required by the student, and therefore, the assigned bus aide could prevent the student from throwing his feces even if the bus is in motion.
 14. A review of the audio recording of the July 16, 2019 IEP team meeting reflects that the school staff reported that the student was able to be successfully transported to his previous school, which is a much greater distance from his home than the current school, without an additional bus aide. They also reported that, while the student had bowel movements on the bus at the start of previous school years, they did not continue, and thus, were thought to be a temporary reaction to transition to a new school.
 15. A review of the audio recording of the July 16, 2019 IEP team meeting reflects that the student's mother reported that the student uses the restroom two (2) to three (3) times in the morning before getting on the bus. The student's mother also reported that the student had experienced similar incidents in the home recently, and the school staff explained that this could also be in reaction to transition to their new home since the family had recently moved. The complainant and the student's mother indicated that they did not believe that it was a response to a transition. The school staff inquired about whether it could be related to diet or medicine changes. The complainant stated that the student was getting appropriate medical care, and indicated an intent not to have the team pursue this.
 16. The documentation and a review of the audio recording on the July 16, 2019 IEP team meeting reflects that, based on information from the school-based members of the team, the IEP team rejected the complainant's request for an additional bus aide. The team decided that, in addition to the plan being implemented, the student's bus will be allowed to pull into a parking spot closest to the school. The team also decided that the plan to address the student's behavior will be posted on the bus, and that if there is a substitute aide on the bus, the bus staff will also discuss the plan with the substitute on the date that the substitute begins work. The team further decided that positive supports and strategies would be added to the IEP to require that if there is a change in bus staff, new staff training will be conducted on how to address the student's behaviors prior to the new staff working with the student.
 17. In addition, a review of the audio recording of the July 16, 2019 IEP team meeting reflects that the complainant requested that the specific content of the bus staff training be described in the IEP. This was rejected and it was explained that such information is not

required to be on an IEP. However, the team agreed that the complainant would be invited to participate in bus staff trainings so that he is aware of the manner in which trainings are conducted.

18. The documentation and a review of the audio recording of the July 16, 2019 IEP team meeting also reflects that the complainant requested that the IEP require that a surveillance camera be installed on the student's bus at all times so that the complainant can monitor the bus activity. The IEP team rejected the request based on information from the school-based members that video recorders are used on all buses as a general safety procedure, and that there was no data that the student has an individualized need for video recording on the bus as a special education service.
19. A review of the audio recording of the July 16, 2019 IEP team meeting reflects that the complainant requested that the IEP require that a bus incident report be provided to him each time the student demonstrates behavior on the bus, such as fecal smearing, within one (1) school day of each incident. The school-based members of the team reported that they already provide bus incident reports, which include such incidents. However, the complainant requested additional detail in the reports of such incidents. The IEP team denied the request based on the decision that there was no data that the student has an individualized need for such detailed reporting as a special education service.
20. The documentation and a review of the audio recording of the July 16, 2019 IEP team meeting further reflects that the complainant requested that the student's bowel movements be tracked on a daily basis, as well as other behaviors, including aggression. The school staff reported not having observed aggressive behaviors recently. However, the IEP team agreed to track behaviors including aggression and bowel movements on a daily basis in order to collect baseline data on these behaviors.
21. A review of the audio recording of the July 16, 2019 IEP team meeting reflects that the complainant requested that the IEP require the school psychologist to perform mental health consultation with the parents and teachers to assist with addressing the student's maladaptive behaviors, and that the school psychologist attend every IEP team meeting. The school system staff reported school psychologists do not have the clinical background to perform this function, but that the behavioral specialist and social workers who are already required by the IEP to perform this task do have those skills. They also reported that there was no data to suggest that a school psychologist will be needed at every IEP team meeting. They explained that the school psychologist would be invited whenever needed, such as when the team is interpreting the results of assessments. Based on the information from the school system staff, the team rejected the complainant's requests.
22. The IEP states 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 states 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, not difficulties with self-regulation.”

23. The IEP requires that the student be provided with a variety of supports during the school day, including one-to-one adult support to facilitate task completion and for “direct supervision for all activities of daily life,” such as assistance with toileting, feeding and hygiene.

DISCUSSION/CONCLUSIONS:

In developing each student’s IEP, the IEP team must consider many sources of data, including 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).

The OSEP, requires that, during the investigation of an allegation that a student has not been provided with an appropriate educational program under the IDEA, the State Educational Agency (SEA) review the procedures that were followed to reach determinations about the program. The SEA must also review the evaluation data to determine if decisions made by the IEP team are consistent with the data (OSEP Letter #00-20, July 17, 2000 and *Analysis of Comments and Changes to the IDEA*, Federal Register, Vol. 71, No. 156, p.46601, August 14, 2006).

When it is determined that the public agency has not followed proper procedures, the SEA can require it to ensure that the IEP team follows proper procedures to review and revise, as appropriate, the program to ensure that it addresses the needs identified in the data. The SEA may not, however, overturn an IEP team’s decisions when proper procedures have been followed and there is data to support the team’s decisions. The OSEP indicates that parents may challenge an IEP team’s decisions by filing a due process complaint or requesting mediation to resolve the dispute (OSEP Letter #00-20, July 17, 2000 and *Analysis of Comments and Changes to the IDEA*, Federal Register, Vol. 71, No. 156, p.46601, August 14, 2006).

In this case, the complainant alleges that, at the July 16, 2019 IEP team meeting, his concerns about the student’s fecal smearing and the potential for throwing feces, and other behavior on the bus were not sufficiently addressed. Therefore, he alleges that the IEP team did not ensure that the functional, including health and safety needs of the student identified at the meeting, were met.

Based on the Findings of Facts #10 - #23, the MSDE finds that the IEP team considered the required data, including the complainant’s concerns, and that there was information to support the IEP team’s decisions, in accordance with 34 CFR §300.324. Therefore, the MSDE does not find that a violation occurred with respect to the allegation.

**ALLEGATION #5 IEP TEAM PARTICIPANTS – SPECIAL EDUCATION TEACHER
ON JULY 16, 2019**

FINDING OF FACT:

24. The purpose of the July 16, 2019 IEP team meeting was to address the complainant's concerns about transportation as a result of reports that the student had toileting accidents on the bus.
25. The documentation and a review of the audio recording of the July 16, 2019 IEP team meeting reflect that the student's specialized transportation providers, the bus driver and bus aide, participated in the meeting, but not the special education teacher.
26. On July 17, 2019, the complainant responded to the special education teacher's inquiry about whether there is a particular strategy that the complainant uses to prevent the student from touching his feces when toileting. In his response, the complainant provided information that the student does not touch his feces when toileting at home and described strategies used by the staff at the student's previous school. In this communication, the complainant indicated that he wished that the special education teacher had attended the July 16, 2019 IEP team meeting because there was a discussion about fecal smearing during that meeting.

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).

In this case, the complainant alleges that the IEP team that convened on July 16, 2019 should have included the student's special education teacher so that the team could have discussed strategies for preventing the student from smearing feces, either in school or on the bus, in response to the special education teacher's inquiry following the meeting.

Based on the Findings of Facts #24 - #26, the MSDE finds that, while it may have been helpful for the special education teacher to inquire about strategies for preventing the student from touching his feces at the meeting, it was held specifically to address the complainant's concerns about transportation. Therefore, it was appropriate to include the student's related transportation service providers and the special education teacher was not required to participate in the meeting, in accordance with 34 CFR §300.321. Thus, this office does not find that a violation occurred with respect to the allegation.

**ALLEGATION #6 IEP TEAM PARTICIPANTS – NONPUBLIC SCHOOL
REPRESENTATIVE PRIOR TO PLACEMENT AT**



FINDING OF FACT:

27. A review of the audio recording of the June 11, 2019 IEP team meeting, which was held at the start of the one (1) year time period that can be addressed by this investigation, reflects that the decision to place the student at [REDACTED] had already been made by the date of that meeting. The placement decision was not revisited at the June 11, 2019 IEP team meeting.

DISCUSSION/CONCLUSION:

Before a public agency places a student with a disability in, or refers the student to, a private school or facility, the public agency must initiate and conduct a meeting to develop an IEP for the student and ensure that a representative of the private school attends the meeting (34 CFR §300.325).

In this case, the complainant alleges that the IEP team that convened on June 11, 2019 changed the student's educational placement from one (1) nonpublic school to another nonpublic school with a different education program, without participation by a representative of the new nonpublic school.

Based on the Finding of Fact #27, the MSDE finds that the IEP team did not make a decision about the student's educational placement at the June 11, 2019 IEP team meeting or within the time period that can be addressed through this investigation, and thus, the requirements of 34 CFR §300.325 do not apply. Therefore, this office does not find that a violation occurred with respect to the allegation.

If the complainant believes that the IEP cannot be effectively implemented at [REDACTED] he maintains the right to request an IEP team meeting to address his concerns.

**ALLEGATIONS #7 AND #8 IEP TEAM PARTICIPANTS – PARENTS
ON FEBRUARY 26, 2020 AND
PRIOR WRITTEN NOTICE OF
DECISIONS MADE AT THE MEETING**

FINDINGS OF FACTS:

28. The student's educational record contains a document entitled, "Notice and Consent for Assessment," dated February 26, 2020. This document states:

The IEP team considered the following existing evaluation(s), assessment(s), procedures(s), record(s), reports(s) and interventions(s):

The school team reviewed [the student's] current Functional Behavioral Assessment (FBA) and Behavior Intervention Plan (BIP) created at his previous placement along with current [Therapeutic Behavioral Aide] and daily log sheets.

29. The document states that, based on a review of these data sources, there was relevant information to update the student's BIP, and therefore, an updated FBA was recommended. The document also contains a statement that the complainant has protections under the procedural safeguards and provides sources to obtain assistance understanding them.
30. The parent contact log reflects that, on February 26, 2020, the school staff sent the complaint the "Notice and Consent for Assessment," along with other documents, in preparation for an IEP team meeting to conduct the annual IEP review that was scheduled for April 2, 2020.
31. There are no IEP team meeting invitations, written summaries, or revised IEP in the student's educational record that reflect that an IEP team meeting was conducted on February 26, 2020.

DISCUSSION/CONCLUSIONS:

Allegation #7 Parent Participation

The public agency must take steps to ensure that one (1) or both of the parents are present at each IEP team meeting or are afforded the opportunity to participate as they are required members of the IEP team. This includes notifying the parents of the purpose, time, and location of the meeting and who will be in attendance early enough to ensure the parents will have the opportunity to attend (34 CFR §§300.321 and .322). In Maryland, this notice must be in writing and be provided at least ten (10) days in advance of the meeting unless the meeting must be expedited (COMAR 13A.05.01.07).

In this case, the complainant alleges that an IEP team meeting was held on February 26, 2020 without his being provided with notice and opportunity to participate in the meeting.

Based on the Findings of Facts #28 - 31, the MSDE finds that, despite the use of the term "IEP team" on the "Notice and Consent for Assessment," the document clarifies that the proposal was being made by school-based members of the team, and there is documentation that the proposal was made for consideration by the IEP team at an upcoming annual IEP review. Based on these Findings of Facts, this office finds that the IEP team was not convened on February 26, 2020, and there was no need to ensure that an invitation was issued to the complainant, 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 the allegation.

Allegation #8 Prior Written Notice

Written notice must be provided to parents any time a public agency proposes or refuses to initiate or change the identification, evaluation, or educational placement of a student with a disability or the provision of a Free Appropriate Public Education (FAPE) to that student. The written notice must including information such as the a description of and explanation for the action proposed or refused, a description of any evaluation, assessment, or other data used as a basis for the proposal or refusal, and the other options considered and why they were rejected. It must also contain a statement that parents of students with disabilities have protections under the procedural safeguards and the means by which a copy of those safeguards can be obtained and sources to obtain assistance understanding them (34 CFR §300.503).

In this case, the complainant alleges that the PGCPs convened an IEP team that made educational decisions for the student, including the proposal to conduct a reevaluation, but did not provide him with PWN of those decisions.

Based on the Findings of Facts #28 - #31, the MSDE finds that, while there was no IEP team convened on February 26, 2019, the school system proposed to conduct an assessment on that date. Based on those Findings of Facts, the MSDE finds that the complainant was provided with PWN of that proposal, in accordance with 34 CFR §300.503. Therefore, this office does not find that a violation occurred with respect to the allegation.

ALLEGATION #9 IMPLEMENTATION OF THE DECISION TO ENCOURAGE PARENTS TO INTRODUCE THE STUDENT TO EXTRACURRICULAR ACTIVITIES IN THE HOME SINCE JUNE 11, 2019

FINDINGS OF FACTS:

32. The IEP in effect on June 11, 2019 reflects that the IEP team had determined the supplementary aids and services needed for the student to participate in nonacademic and extracurricular activities as part of his education program. It further reflects that the IEP team decided that the student could not participate in these activities with nondisabled peers even with the provision of supplementary aids and services.
33. In addition, the IEP in effect on June 11, 2019 includes a statement that “the parents will continue to be encouraged to introduce [the student] to extracurricular activities in his home environment within his ability.” This language was continued on the IEP when it was revised on June 9, 2020.
34. There is no evidence that the school staff encouraged the complainant or the student’s mother to introduce the student to extracurricular activities in the home environment. The school system staff report that the statement in the IEP was meant to reflect discussion that, while the student cannot participate in extracurricular activities with nondisabled students as part of the education program, the family was encouraged to

involve him in activities at home in addition to those he could participate in within the educational setting.

DISCUSSION/CONCLUSIONS:

The public agency must ensure that each student with a disability is provided with the special education and supplementary aids and services needed to advance appropriately toward attaining the annual IEP goals, be involved in the general education curriculum, and participate in nonacademic and extracurricular activities. In order to ensure that services determined necessary by the IEP team are provided, the IEP must contain a clear statement of those services (34 CFR §§300.101, .320, and .323).

However, as stated in Allegation #3 above, the requirement for participation in nonacademic and extracurricular activities is for the public agency to provide equal opportunity for students with disabilities to access activities that it sponsors. It is not designed to address a student's participation in the daily activities of the family (34 CFR §300.107).

In this case, the complainant alleges that the PGCPS did not ensure that the IEP team's decision that "the parents will continue to be encouraged to introduce [the student] to extracurricular activities in his home environment within his ability" was implemented. The complainant reports that he understood this to mean that he would be provided with assistance by the school staff for identifying such activities and guidance for engaging the student in those activities.

Based on the Findings of Facts #32 - #34, the MSDE finds that, while there is no requirement for the school system to assist the complainant with engaging the student in family activities, the IEP is not written clearly and created an expectation that a service would be provided, in accordance with 34 CFR §§300.101, .107, and .323. Therefore, this office finds that a violation occurred.

Notwithstanding the violation, based on the Findings of Facts #32 and #33, the MSDE finds that, because the service the complainant believed would be provided was not designed to address the student's needs with respect to his education program, the violation did not impact his ability to benefit from the education program.

ALLEGATION #10

**IMPLEMENTATION OF THE BIP
FROM JULY 1, 2019 TO APRIL 10, 2020**

FINDINGS OF FACTS:

35. The student's BIP requires the provision of interventions to prevent and respond to targeted behaviors that interfere with the student's education. These behaviors include aggression, leaving the assigned area for more than three (3) feet without permission, physical disruptions, spitting, and disrobing. The BIP requires the school staff to record the frequency of the targeted behaviors and the time in which they occur daily, as well as the interventions used to address the behavior. It also requires that the data be reviewed at least monthly to monitor the effectiveness of those interventions.

36. There is documentation of the development of a Therapeutic Behavior Aide (TBA) binder that includes information about the student's targeted behaviors and the interventions to be provided in response to those behaviors, consistent with the BIP. There are also sign in sheets that demonstrate that the TBAs at [REDACTED] meet on a monthly basis to receive training and discuss the provision of supports to the students.
37. There is documentation that the TBA binder included a form for the TBA to use to collect data on a daily basis on the target behaviors described in the BIP, but no documentation that the form was used to collect data.
38. There are Antecedent, Behavior, Consequence (ABC) charts that were used to collect data on incidents of aggression, spitting, and bowel movements, as discussed at the July 16, 2019 IEP team meeting. However, these charts were not used to collect data on the student's leaving the assigned area for more than three (3) feet without permission, physical disruptions, and disrobing, as required by the BIP, and they do not reflect the interventions used when the student demonstrated the behaviors of aggression and spitting, as required by the BIP.
39. A review of the written summary and the audio recording of an IEP team meeting held on June 9, 2020 reflects that the IEP team discussed that the school staff had not observed the behaviors of disrobing, spitting, leaving an assigned area, or physical disruption during the 2019-2020 school year, and therefore, these behaviors did not need to be targeted by the BIP. The team decided that once schools resume normal functioning and the student can be observed in a classroom setting, a Functional Behavioral Assessment (FBA) will be conducted and the BIP revised based on that data.

DISCUSSION/CONCLUSIONS:

As stated above, the public agency must ensure that each student with a disability is provided with the special education and supplementary aids and services needed to advance appropriately toward attaining the annual IEP goals, be involved in the general education curriculum, and participate in nonacademic and extracurricular activities (34 CFR §§300.101 and .323).

In this case, the complainant alleges that [REDACTED] staff did not collect and monitor behavior data consistent with the BIP from July 2019 until April 2020.

Based on the Findings of Facts #35 - #39, the MSDE finds that the school staff did not collect and monitor behavior data consistent with the BIP, in accordance with 34 CFR §§300.101 and .323. Therefore, this office finds that a violation occurred with respect to the allegation.

Notwithstanding the violation, based on the Findings of Facts #35 and #39, the MSDE finds that the student did not demonstrate the behaviors of disrobing, spitting, leaving an assigned area, or physical disruption during the 2019-2020 school year, and thus, the lack of implementation of

the BIP to address these behaviors did not negatively impact the student's ability to benefit from his education program.

**ALLEGATION #11: IMPLEMENTATION OF TRANSITION ACTIVITIES
REQUIRED BY THE IEP DEVELOPED ON APRIL 11, 2019**

FINDINGS OF FACTS:

40. The IEP developed on April 11, 2019 includes transition activities for the student to complete while the IEP was to be in effect. These activities included the following: (a) visit/complete orientation to a high school program; (b) acquire social skills strengths; (c) attend a career fair; (d) identify jobs that match interests and ability; (e) develop food preparation skills; (f) identify a network of supports; and (g) become independent with toileting routines.
41. A review of the audio recording of a June 9, 2020 IEP team meeting reflects that the complainant acknowledged receiving photographs of the student engaged in transition activities from the transition coordinator. In addition, there are reports, dated June 10, 2019, November 4, 2019, and February 5, 2020, which document that the student was engaged in all of these activities, and had completed some, but not all of them prior to the Statewide closure of schools due to the national COVID-19 pandemic. The IEP has been revised since that time to include transition activities that can be completed through virtual learning.

DISCUSSION/CONCLUSIONS:

As stated above, the public agency must ensure that each student with a disability is provided with the special education and supplementary aids and services needed to advance appropriately toward attaining the annual IEP goals, be involved in the general education curriculum, and participate in nonacademic and extracurricular activities (34 CFR §§300.101 and .323).

In this case, the complainant alleges that the PGCPS did not ensure that all of the transition activities required by the IEP developed on April 11, 2019 were implemented because the student had not completed all of the activities within the year that the IEP was in effect.

Based on the Findings of Facts #40 and #41, the MSDE finds that the documentation reflects that the student was provided with the transition activities described in the IEP despite not having achieved the outcomes within the year that the IEP was in effect, in accordance with 34 CFR §§300.101 and .323. Therefore, this office does not find that a violation occurred with respect to the allegation.

**ALLEGATION #12 IMPLEMENTATION OF TOILETING ASSISTANCE
FROM JULY 1, 2019 UNTIL APRIL 10, 2020**

FINDINGS OF FACTS:

42. The IEP requires that an adult assist the student with toileting due to his history of fecal smearing and play while using the restroom. This includes blocking 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. The IEP states that the staff responsible for this task include the special education classroom teacher, instructional assistant, and a TBA.
43. There is documentation of the development of a TBA binder that includes information about the supplementary aids and supports that the TBA had responsibility for implementing, including toileting assistance, consistent with the IEP. There are also sign in sheets that demonstrate that the TBAs at [REDACTED] meet on a monthly basis to receive training and discuss the provision of supports to the students.
44. A review of the ABC charts used to collect baseline data on behaviors such as bowel movements, as agreed at the July 16, 2019 IEP team meeting, reflects that the student frequently has more than one (1) and has had up to seven (7) bowel movements at school each day. The data reflects that some of these bowel movements are spontaneous and do not occur during toileting. The data also reflects that these incidents sometimes result in the student soiling his clothing. However, the data documents that the student is being provided with adult assistance with toileting and with cleaning up after such incidents.
45. An email from the school staff to the complainant, dated September 13, 2019, reflects that the complainant was informed that the TBA is never alone with the student and that a team approach is used with all activities, including toileting.

DISCUSSION/CONCLUSIONS:

The public agency must ensure that the IEP is accessible to each service provider responsible for implementation of the IEP and that each provider is informed of his or her specific responsibilities for implementing the IEP (34 CFR §§300.323).

In this case, the complainant asserts that the IEP requires that a TBA assist the student with toileting, and that this staff member was not informed of his responsibility for this service from July 1, 2019 until April 10, 2020.

Based on the Findings of Facts #42 - #45, the MSDE finds that there is documentation that the TBA was informed of his responsibility for assisting the student with toileting and that the student was provided with this service, in accordance with 34 CFR §300.323. Therefore, this office does not find that a violation occurred with respect to the allegation.

**ALLEGATION #13 IMPLEMENTATION OF PARENT COMMUNICATION FROM
JULY 1, 2019 UNTIL APRIL 10, 2020**

FINDINGS OF FACTS:

46. The IEP requires a home-school communication system via the student's communication book that is provided daily and is available via email for parent questions and concerns. The IEP states that "additionally, behavior data is collected daily and sent weekly," and that the service will be primarily provided by the special education teacher.
47. A review of the ABC charts used to collect data on behaviors such as aggression and bowel movements, as agreed at the July 16, 2019 IEP team meeting, reflects that the school staff and the parents regularly shared information about these and other aspects of the student's day at school and at home. In addition, there are emails between the complainant and the school staff that document that the school staff responded to frequent questions and concerns of the complainant throughout the time period covered by the investigation.
48. The complainant provided email exchanges as evidence that the school staff did not consistently address his questions and concerns, including the following, for which there is no documentation of a response from the school staff:
- a. On July 15, 2019, the special education teacher sent the complainant an email stating that there were "a couple of smearing situations today," and asking if there is a particular strategy the complainant uses when the student is in the bathroom to prevent the student from touching his feces so that the strategies used at home and at school are consistent.
 - b. On July 17, 2019, the complainant responded to the special education teacher as follows:

At home he doesn't touch his poop when he is in the bathroom. Normally fecal smearing happens outside the bathroom. But, I know the [REDACTED] ([REDACTED]) had some support during his bathroom usage. He had some kind of sheet they used to cover his lap. This was for privacy as well as to prevent him from touching his poop. Also, I think they used to ask him to hold his hands together while using the toilet. Is [REDACTED] staff still available if you have any question on this?
 - c. On October 29, 2019, the complainant sent the teacher an email asking for confirmation that the student went on a field trip the previous day and how he did during the field trip.

- d. On February 21 and 26, 2020, the complainant sent the teacher an email indicating that he received a bag of soiled clothes the previous day and that he did not receive the ABC chart, but that the daily log reflects the student had a great day. The complainant asked whether the student engaged in stool smear that day.
 - e. On February 24, 2020, the complainant sent the teacher an email stating that, while the daily log reflected that the student requires extra clothing, the complainant had already sent extra clothing and asking if the school staff were having difficulty locating them.
 - f. On March 9, 2020, the complainant sent the teacher an email indicating that the student was sent home with another student's clothing on several times and that the student should have extra clothes of his own at school. The complainant also requested information about whether the extra clothing was needed as a result of stool smearing.
49. There is no documentation that the special education teacher responded to the inquiries made by the complainant on July 17, 2019 about contact with the previous school staff regarding toileting strategies. However, there are emails from both [REDACTED] and the [REDACTED] that there was communication between the two (2) schools about addressing the student's "tendency to fecal smear and rectal dig." [REDACTED] staff reported that there was no specific toileting protocol developed, but that the 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 [REDACTED] staff reported being able to fade this support "significantly," once the student became familiar with the routine.
50. There are emails between the complainant and the school staff in September 2019 in which the complainant indicated that the student came home with scratches on his hands and reported that they were from a "[REDACTED]". While there is no documentation of a staff member by that name and the school staff report that they are not aware of a staff member by this name, the complainant asked the school staff more than once whether there was a staff member at the school by this name, but did not receive a response.
51. The complainant also provided the following documentation:
- a. On November 13, 2019, the complainant sent the special education teacher an email stating that the student came home on November 12, 2019 with a bag of soiled clothing, but that the behavior chart for that date indicated no behaviors were demonstrated. Therefore, the complainant requested an explanation for what

happened. He also requested that the school return a hoodie and sweater that the student wore to school but did not wear home.¹

- b. On November 14, 2019, the complainant sent the special education teacher an email stating that he received another set of soiled clothing on November 13, 2019 without an explanation in the daily behavior chart other than that the staff thought the student did not like the song that was being played during the incident that occurred. The complainant requested that the school staff not engage in conjecture about the cause of the behavior, and only report what they observe.² The complainant also indicated that he received the student's sweater, but had not yet received the hoodie and asked if the school staff were having difficulty locating the hoodie.
52. On November 14, 2019, the special education teacher responded to the complainant's inquiries that the student had three (3) bowel movements in school that day, and that while one (1) of them occurred "without incident," the other two (2) were "spontaneous actions." The teacher reported that on the other two (2) occasions, while in the bathroom being cleaned, the student "managed to smear feces on the walls of the stalls, and began to consume portions of the feces before he could be stopped." The teacher indicated that the school staff were continuing to search for the hoodie and asked if the complainant knew the brand name.³
 53. The complainant also provided the following emails for which there is no documentation of a response from the school staff:
 - a. On February 3, 2020, the complainant sent the school staff an email stating that he received a bag of soiled clothes on that date and asking if the student engaged in fecal smearing. It also states that the complainant did not receive the ABC chart for that day.
 - b. On February 4, 2020, the complainant sent the school staff an email stating that he did not receive the ABC chart for that day and asking that the school staff address the matter.
 54. A review of the audio recording of a June 9, 2020 IEP team meeting reflects that at that meeting, the complainant clarified that he had expected more specific information to be

¹ The ABC chart completed by the school staff on November 12, 2019 states that the student had a bowel movement while on a regularly scheduled bathroom break, that he was "acting good with proper behavior" and went back to doing his work with no problem, but that he needed extra clothes afterward.

² The ABC chart for November 13, 2019 states that the student had a bowel movement while watching morning songs, that he was "not angry or upset," but that he reported that he thought the student did not like the song that was being played. The chart states that the student went on a field trip shortly after he was changed.\

³ The ABC chart for November 14, 2019 states that the student had bowel movements on himself, once while on break and another time while eating a snack, and that he was returned to the classroom after each incident.

reported through the ABC charts, including whether or not there was a fecal smearing incident each time the student had a bowel movement. The complainant clarified that he also expected data to be collected about what occurred before, during, and after each toileting accident, and that he was frustrated that this data was not collected during the 2019-2020 school year. 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. However, the school staff denied that the student frequently engaged in this behavior and explained that his clothing was frequently soiled because he had toileting accidents, but that he did not engage in fecal smearing every time he had toileting accidents, only on the handful of occasions when this was specifically reported. The IEP team decided that when normal school operations resume, data would be collected in the manner requested by the complainant in order to resolve his concern that the student is regularly engaged in fecal smearing.

DISCUSSION/CONCLUSIONS:

As stated above, the public agency must ensure that each student with a disability is provided with the special education and supplementary aids and services needed to advance appropriately toward attaining the annual IEP goals, be involved in the general education curriculum, and participate in nonacademic and extracurricular activities (34 CFR §§300.101 and .323).

In this case, the complainant alleges that the PGCPS did not ensure timely and appropriate communication between himself and the school staff, as required by the IEP, from July 1, 2019 until April 10, 2020. He asserts that he has had “extreme difficulty” obtaining responses to electronic mail messages (emails) to the school staff, and has reached out to the school social worker and principal, but continued to not receive responses to his requests for information, specifically for information about what is happening at school that the student is coming home with his clothes soiled and with clothing on that does not belong to him.

Based on the Findings of Facts #19, #20, and #46 - #54, the MSDE finds that, while the information provided to the complainant through the ABC charts did not include the detail the complainant wanted, he was provided with regular communication about the student’s behavior during the school day through these charts consistent with the IEP team’s decision, in accordance with 34 CFR §§300.101 and .323.

However, based on those Findings of Facts, the MSDE finds that, while there was also regular communication between the complainant and the school staff through email, the school staff did not consistently respond to every inquiry from the complainant as required by the IEP, in accordance with 34 CFR §§300.101 and .323. Therefore, this office finds that a violation occurred with respect to the allegation.

ALLEGATION #14

IMPLEMENTATION OF MENTAL HEALTH CONSULTATION SERVICES FROM

JULY 1, 2019 UNTIL APRIL 10, 2020

FINDINGS OF FACTS:

55. The IEP also requires thirty (30) minutes per quarter of mental health consultation “to support ongoing collaboration and problem solving which assists in individualizing programming to [the student’s] needs.” The IEP states that the service will be provided by the school social worker and “other service provider – LCPS (licensed clinical professional counselor).” When determining this service would be provided for thirty (30) minutes per quarter on April 11, 2019, the IEP team documented on the IEP that “the consult service has supported weekly sending of behavior data, the creation of the bus document to support [the student’s] bus staff, and ongoing communication between family and school.”
56. A review of the audio recording of the June 9, 2020 IEP team meeting reflects that, at that meeting, the complainant reported that the school social worker was providing more than thirty (30) minutes per quarter of mental health consultation, and that based on that information, he requested that the amount of consultation be increased. In addition, the school social worker’s service log documents the provision of mental health consultation as follows:
- a. Forty-five (45) minutes during the quarter from July 2019 through October 2019⁴ to discuss student behavior such as spitting and picking his skin, as well as the Autism waiver services;
 - b. Forty-five (45) minutes during the quarter from November 2019 through January 2020 to discuss the student’s toileting issues and bathroom protocol and strategies for preventing the student from fecal smearing; and
 - c. Twenty-five (25) minutes for the quarter starting February 2020 until April 10, 2020 at the closure of schools due to the COVID-19 pandemic to discuss feeding and virtual learning.
57. An email from the complainant to the PGCPS Director of Transportation and copied to other PGCPS Central Office staff and the school social worker documents that on October 2, 2019, the complainant expressed the following concerns:
- a. The adjusting clip of the right shoulder side of the student’s safety vest was missing;
 - b. The student was being seated immediately behind the bus aide and that such placement would not enable the aide to prevent the student’s throwing objects, which could result in a safety issue;

⁴ This quarter covers the periods of July 2019, September 2019, and October 2019. The school is closed for the month of August 2019.

- c. The bus was arriving thirty (30) to forty-five (45) minutes after the scheduled arrival time to pick the student up in the morning.
58. An email from PGCPs Nonpublic Office staff to the complainant documents that on October 3, 2019, the complainant was informed that the PGCPs Director of Transportation would respond to him after he returned to the office on October 7, 2019, and that in the meantime, she would take the student's back up safety vest to [REDACTED]
59. An email from the complainant to the PGCPs Nonpublic Office staff documents that on October 4, 2019, the complainant indicated that it was his understanding [REDACTED] had already been provided with a backup safety vest and asking for clarification. The school principal and social worker were copied on the email exchange.
60. There are email correspondences among the school staff, dated October 4, 2019, which document that the school staff had the back up safety vest at the school and made obtained a replacement for the broken vest on that date. The emails reflect that the driver trainer addressed the matter of the bus arriving late with the student's bus driver and reported to the PGCPs Central Office staff that the bus aide and student were seated in a manner that was designed to assist the aide in keeping an eye on the student. However, there is no documentation that this was communicated to the complainant.
61. There are emails from the complainant to the school social worker and other school staff reporting that the bus was arriving late to pick the student up for school and requesting that they keep a record of when the student's bus arrives to school late. The school staff informed the complainant that they are to track only behavior and school based data and the "Prince George's County has an amazing bus application that I highly suggest if you would like to track bus departure and arrival times." The complainant responded that he wished to have them document the days when the student's bus arrives late to school so that he can be aware of any loss of instruction. Following his request, the school staff added notations of the bus arrival times to the ABC charts.

DISCUSSION/CONCLUSIONS:

As stated above, the public agency must ensure that each student with a disability is provided with the special education and supplementary aids and services needed to advance appropriately toward attaining the annual IEP goals, be involved in the general education curriculum, and participate in nonacademic and extracurricular activities (34 CFR §§300.101 and .323).

In this case, the complainant alleges that there was no coordination of services between the school and transportation staff that was to be provided through a mental health consultation service. He also alleges that, because the social worker was copied on emails to the teacher for which he did not receive a response, the mental health consultation was not provided.

Based on the Findings of Facts #55 - #61, the MSDE finds that, while email communication has not been effective as indicated in Allegation #13 above, there was coordination of services between the school and transportation staff, as required by the IEP, and that the complainant was provided with the amount of consultation required by the IEP, in accordance with 34 CFR §§300.101 and .323. Therefore, this office does not find that a violation occurred with respect to the allegation.

**ALLEGATION #15 IMPLEMENTATION OF SPEECH/LANGUAGE SERVICES
FROM JULY 1, 2019 UNTIL APRIL 10, 2020**

FINDINGS OF FACTS:

62. The IEP requires two (2) sessions per week of speech/language therapy for thirty (30) minutes each. The IEP states that these sessions are to be provided through a combination of individual and group settings, and states “service delivery type to be left to the discretion of the clinician.”
63. The speech/language service provider logs from July 1, 2019 through December 2019 reflect that the student was provided with weekly speech/language services through a combination of individual and group therapy. On four (4) weeks, only one (1) thirty (30) minute session was provided. However, those sessions were made up through the provision of additional thirty (30) minute sessions on other weeks. The logs also reflect that the school was closed on five (5) days when the student was scheduled to receive services, and that the student was “unavailable” to access services three (3) days due to his behavior during that time period.
64. The speech therapy progress notes from January 2020 through April 2020 reflect that the student was provided with weekly speech/language services through a combination of individual and group therapy. On three (3) of those weeks, only one (1) thirty (30) minute session was provided. However, those sessions were made up through the provision of additional thirty (30) minute sessions on other weeks. The speech therapy progress notes also reflect that the student was absent on one (1) day in April 2020 when services were attempted. They also reflect that services were not provided on one (1) day in March 2020 when school was dismissed early and during the last three (3) weeks in March 2020 when school was closed due to the COVID-19 pandemic.⁵

DISCUSSION/CONCLUSIONS:

As stated above, the public agency must ensure that each student with a disability is provided with the special education and supplementary aids and services needed to advance appropriately

⁵ The speech therapy progress notes reflect that the services began through distance learning in April 2020.

toward attaining the annual IEP goals, be involved in the general education curriculum, and participate in nonacademic and extracurricular activities (34 CFR §§300.101 and .323).

The OSEP has provided guidance that the public agency is responsible for making alternative arrangements to provide the services required by the IEP when other school-related activities make either the student or the service provider unavailable during the time that the service is regularly scheduled. The OSEP has indicated that the public agency is not obligated to do so when the student is unavailable for other reasons, such as during absences from school (*Letter to Balkman*, OSEP, 23 IDELR 646, April 10, 1995).

In this case, the complainant alleges that the PGCPS was required to ensure that speech/language services be provided in both individual and group settings each week, and that the student was not provided with the services in both settings each week.

Based on the Finding of Fact #62, the MSDE finds that the IEP permits the service provider to determine the settings in which the services will be provided, and therefore, there is no requirement to provide the services in both settings each week.

The complainant also alleges that the PGCPS was required to convene the IEP team to determine how to make up for any loss of services due to unavailability of the service provider, but did not do so. The MSDE finds that, pursuant to the federal guidance, the school system has the authority to make up a loss of services without convening the IEP team to determine how to do so.

Based on the Findings of Facts #62 - #64, the MSDE finds that there is documentation that the student has been provided with the amount of speech/language services in the settings required by the IEP, in accordance with 34 CFR §§300.101 and .323. Therefore, this office does not find that a violation occurred.

ALLEGATION #16

IMPLEMENTATION OF BUS SEATING IN CLOSE PROXIMITY TO BUS AIDE ON JULY 3, 2019

FINDINGS OF FACTS:

65. The IEP requires that the bus aide sit in close proximity to the student due to the student's behaviors.
66. There are documents, including an email between school system and school staff containing meeting notes, a sign in sheet, and a list of strategies, that document that the transportation staff [REDACTED] were trained on the student's transportation needs on June 28, 2019 prior to the student's first (1st) day of school on July 1, 2019. The strategies state that the bus aide is to "maintain proximity to [the student] while seated during [the] bus ride (sit as close as possible)."

67. A review of the video recording of the student's bus on July 3, 2019 reflects that the bus aide sat several seats in front of the student on the bus on that day and was not seated as close as possible to him. A review of the video recording of the bus reflects that the bus aide did not check on the student until the students were being exited from the bus. There is a report that the student had a bowel movement on the bus on that date and the video recording of the student's bus on that date reflects that the school staff had to clean the student before he exited the bus.
68. A review of the bus incident reports from the 2019-2020 school year reflects that there were no more fecal smearing incidents reported following the July 16, 2019 IEP team meeting to address the complainant's concern about support being provided to the student on the bus.
69. An email from the complainant to the PGCPD Director of Transportation documents that during the 2019-2020 school year, the student was seated immediately behind the bus aide on the bus in a position in which she believed she could best observe the student.

DISCUSSION/CONCLUSIONS:

As stated above, the public agency must ensure that each student with a disability is provided with the special education and supplementary aids and services needed to advance appropriately toward attaining the annual IEP goals, be involved in the general education curriculum, and participate in nonacademic and extracurricular activities (34 CFR §§300.101 and .323).

In this case, the complainant alleges that, on July 3, 2019, the bus aide did not sit in close proximity to the student on the bus, as required by the IEP.

Based on the Findings of Facts #65 and #66, the MSDE finds that the PGCPD took appropriate steps to ensure that the transportation staff were informed of the requirement to have the bus aide seated in close proximity to the student on the bus in order to address the student's behaviors.

However, based on the Findings of Facts #65 and #67, the MSDE finds that the bus aide did not follow the instruction provided on July 3, 2019, in accordance with 34 CFR §§300.101 and .323. Therefore, this office finds that a violation occurred with respect to the allegation.

Notwithstanding the violation, based on the Findings of Facts #68 and #69, the MSDE finds that since the start of the 2019-2020 school year, the student has been seated in close proximity to the bus aide and there were no more incidents of fecal smearing on the bus after July 2019.

Therefore, no corrective action is required to remediate the violation.

ALLEGATION #17 USE OF PHYSICAL RESTRAINT ON JULY 10, 2019

FINDING OF FACT:

70. A document entitled "Student Intervention Report," dated July 10, 2019, states that on that date, the student had a bowel movement and smeared feces in his hair, ears, eyes and

body. It states that while the school staff were cleaning the student in the bathroom, he attempted to drop into feces on the floor and that the school staff “used two-person immobilization three times to prevent further contamination.” It documents that, prior to the use of restraint, the school staff attempted unsuccessfully to address the behavior with redirection and blocking.

DISCUSSION/CONCLUSIONS:

The public agency must ensure that physical restraint is 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).

In this case, the complainant alleges that physical restraint was used on July 10, 2019 without the presence of an emergency situation in which it was necessary in order to protect the student or others from imminent, serious, physical harm.

Based on the Finding of Fact #70, the MSDE finds that the school staff used physical restraint in order to protect the student from imminent, serious, physical harm after attempting less intrusive interventions, in accordance with COMAR 13A.08.04.05. Therefore, this office does not find that a violation occurred with respect to the allegation.

**ALLEGATION #18 PROVISION OF THE IEP FOLLOWING THE
JULY 16, 2019 IEP TEAM MEETING**

FINDING OF FACT:

71. There is an email from the school system staff to the complainant, dated July 25, 2019, which documents that the IEP from the July 16, 2019 IEP team meeting was forwarded to the complainant electronically on that date.

DISCUSSION/CONCLUSIONS:

The public agency must ensure that the IEP is provided to the parent not later than five (5) business days after the IEP team meeting (COMAR 13A.05.01.07).

In this case, the complaint alleges that he was not provided with the IEP within the required timelines following an IEP team meeting held on July 16, 2019.

Based on the Finding of Fact #71, the MSDE finds that the IEP was not provided within five (5) business days of the July 16, 2019 IEP team meeting, in accordance with COMAR 13A.05.01.07. Therefore, this office finds that a violation occurred with respect to the allegation.

ALLEGATION #19

ACCESS TO RECORDS

FINDINGS OF FACTS:

July 2019 Requests for Records

72. On July 9, 2019, the complainant sent an email to the Director of Transportation and Central Garage, PGCPs, requesting video recordings of the student on the bus on July 3, 2019. The request was copied to the Associate Superintendent, Supporting Services, PGCPs, an Associate General Counsel, PGCPs, and a Special Education Nonpublic Instructional Specialist, PGCPs.
73. On July 11, 2019, the complainant sent an email to the Director of Transportation and Central Garage, PGCPs, requesting video recordings of the student on the bus on July 10, 2019. The request was copied to the Associate Superintendent, Supporting Services, PGCPs, an Associate General Counsel, PGCPs, and a Special Education Nonpublic Instructional Specialist, PGCPs.
74. On Saturday, July 13, 2019, the complainant sent an email to the Executive Director of Special Education, PGCPs, requesting the following records:
 - a. All records of student specific recommendations by the MSDE between July 12 2018 and July 12, 2019 for the student for addressing his transportation needs;
 - b. All records of student specific recommendations by school system between July 12, 2018 and July 12, 2019 for the student after conducting assessments of the safety equipment used with the student;
 - c. The plan to ensure that the student is consistently provided with safety equipment on the bus, which was required by the MSDE on July 11, 2018; and
 - d. Documentation created by the school system between July 12, 2018 and July 12, 2019 to show to the MSDE that the IEP team's decisions were being implemented and that all staff working with the student on the bus have been trained to address the student's specific behaviors.

The email states that the request was also sent to an Instructional Specialist with the PGCPs Nonpublic Office.

75. On July 16, 2019, the IEP team convened and addressed the complainant's concerns about the transportation needs after the student had incidents involving bowel movements on the bus on July 3 and 10, 2019. A review of the audio recording of the meeting reflects that the complainant informed the team that he had made the July 13, 2019 request for documentation of recommendations made for transportation supports.

76. On July 25, 2019, the Associate General Counsel, PGCPSS, provided the complainant with a link to the video from the bus on July 3, 2019. However, there is no evidence that the complainant was provided with access to the video from July 10, 2019.
77. On July 6, 2020, following receipt of the State complaint, the General Counsel, PGCPSS, apologized for the oversight in not providing the complainant with access to the bus video footage for July 10, 2019, and explained that the footage is no longer available.
78. There is no documentation that the complainant was provided with a response to his July 13, 2019 request for documents.

September 2019 Request for Records

79. On September 18, 2019, the complainant requested from the school social worker a copy of a report of a behavioral incident in which the student was involved on the previous day. He repeated the request on September 19, 2019.
80. There is no documentation that the complainant was provided with a copy of the document or was offered the opportunity to review the document.

November 2019 Request for Records

81. An email to the complainant from the PGCPSS Special Education Transportation Coordinator, dated November 21, 2019, documents acknowledgement of receipt of a request for records from the complainant on November 18, 2019.
82. There is no documentation that the complainant was provided with a response to his request.

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 on July 8 and 11, 2019, he made requests for access to the student's educational record to the Director of Transportation, PGCPSS, but has not been provided with the requested access.

The complainant also alleges that on July 13, 2019, he made a request for access to the student's educational record to the Director of Special Education, PGCPSS, but has not been provided with the requested access.

In addition, the complainant alleges that on September 18, 2019, he made a request for access to the student's educational records to a school social worker, but has not been provided with the requested access.

The complainant further alleges that on November 18, 2019, he made a request for access to the student's educational record to the Director of Transportation, PGCPSS, but has not been provided with the requested access.

Based on the Findings of Facts #72 - #82, the MSDE finds that the complainant has not been provided with access to educational records in a timely manner, in accordance with 34 CFR §300.613. Therefore, this office finds that a violation occurred with respect to the allegation.

ALLEGATION #20

OPPORTUNITY FOR HEARING

FINDINGS OF FACTS:

83. On Sunday, June 30, 2019, the complainant sent correspondence to the PGCPSS Special Education Nonpublic Instructional Specialist requesting amendment of the PWN of the June 11, 2019 IEP team meeting. The complainant specifically requested the following changes:
 - a. That the document read that the student was accepted by [REDACTED] and that the information that he was also accepted by [REDACTED] be deleted.
 - b. That the document read that the reasons why options were rejected indicate "N/A."
 - c. That the document be amended to remove the sentence "[The complainant] refused to review outstanding corrective action for state complaints #19-064 and #18-169 at this IEP meeting" based on his assertion that the PGCPSS staff, and not the complainant, refused to discuss the corrective actions at the June 11, 2019 IEP team meeting.
84. On July 1, 2019, the PGCPSS Special Education Nonpublic Instructional Specialist denied the request and informed the complainant of his right to appeal the decision.
85. On July 3, 2019, the complainant requested that the PGCPSS Special Education Nonpublic Instructional Specialist provide him with the name of the Area Superintendent to whom to address his request for appeal, in accordance with PGCPSS Administrative Procedure 5134.
86. On July 3, 2019, the PGCPSS Nonpublic Special Education Nonpublic Instructional Specialist informed the complainant that the appeal was to be addressed to the PGCPSS Nonpublic Supervisor.

87. On July 8, 2019, the complainant appealed the decision to the PGCPs Nonpublic Supervisor.
88. On July 10, 2019 the PGCPs Nonpublic Supervisor granted the complainant's first (1st) two (2) requests for amendment of the record, but denied his third (3rd) request, and informed him that he could request a hearing within five (5) school days to the PGCPs Office of Appeals.
89. On July 17, 2019, the complainant sent an email to the Chief Executive Officer, PGCPs, requesting a hearing, and copied the Chief Hearing Officer of the PGCPs Office of Appeals.
90. On July 31, 2019, the PGCPs Office of Appeals sent the complainant correspondence indicating that he was required to first submit a request to amend the record to the school principal, and if that was denied, he could appeal to the Associate Superintendent. The PGCPs Office of Appeals informed the complainant that his request was being forwarded to the Associate Superintendent for Special Education and Student Services to confirm whether the request was made to the principal of the [REDACTED] before scheduling a hearing.
91. The PGCPs Administrative Procedure 5134 states that the PGCPs Office of Appeals must schedule a hearing to address concerns about the content of a student's educational record "in a reasonable time, not to exceed 30 days of receipt of the hearing request."
92. There are emails between the complainant and the PGCPs Office of Appeals, dated July 6 and 7, 2020, which reflect that the school system has contacted the complainant to schedule a hearing to dispute other documents within the educational record in response to unrelated requests to amend the record made in 2020. The correspondence reflects that the complainant was informed that all hearings need to be conducted virtually due to the COVID-19 pandemic.

DISCUSSION/CONCLUSIONS:

The public agency must, on request, provide an opportunity for a hearing to challenge information in educational records to ensure that it is not inaccurate or misleading (34 CFR §300.619).

This hearing must provide the parent with a full and fair opportunity to present evidence relevant to the issues raised, and permit the parent to be represented at the hearing, at the parent's expense. **The public agency must hold the hearing within a reasonable time after it has received the request for hearing from the parent** [Emphasis added] (34 CFR §§99.21 and .22, and 34 CFR §300.621).

In this case, the complainant alleges that on July 17, 2019, he requested a hearing from the Chief Executive Officer, PGCPs, and Chief Hearing Officer, PGCPs, to contest the accuracy of

information in the student's educational record, but has not been provided with the opportunity for a hearing in a timely manner.

Based on the Findings of Facts #83 - #92, the MSDE finds that the PGCPS has not ensured that the complainant has been provided with a hearing to contest the educational record in response to his request, in accordance with 34 CFR §300.619. Therefore, this office finds that a violation occurred with respect to the allegation.

CORRECTIVE ACTIONS/TIMELINES:

The IDEA requires that State complaint procedures include those for effective implementation of the decisions made as a result of a State complaint investigation, including technical assistance activities, negotiations, and corrective actions to achieve compliance (34 CFR §300.152). Accordingly, the MSDE requires the public agency to provide documentation of the completion of the corrective actions listed below⁶

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.⁷ Dr. Birenbaum can be reached at (410) 767-7770.

The MSDE requires the PGCPS to provide documentation that:

1. The complainant has been provided with copies of the documents he requested on July 13, 2019, September 18, 2019, and November 18, 2019 or an explanation for why they cannot be provided if they no longer exist;
2. The complainant has been informed that he has the right to have the IEP team convene to consider any concerns he has following his review of the above documents;
3. The complainant has been offered a virtual hearing to contest the content of the June 11, 2019 PWN;
4. The IEP team has convened and completed the following:

⁶ 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.

⁷ The MSDE will notify the Directors of Special Education of any corrective action that has not been completed within the required timelines.

- a. Reviewed and revised the IEP to ensure that it is written clearly with respect to the student's participation in nonacademic and extracurricular activities;
- b. Determined whether the lack of implementation of the BIP to address aggression had a negative impact on the student's ability to benefit from his education program, and if so, the compensatory services or other services to remediate the violation; and
- c. Developed a protocol for communication between the complainant and all school and school system staff, including transportation staff.

This communication protocol must identify the PGCPS Central Office staff who will be: (a) responsible for ensuring that the complainant is provided with all documents before and after IEP team meetings in a timely manner; (b) responsible for accepting all requests for access to the record, amendment of the record, and hearings to contest the content of the record; and (c) copied on all correspondence between the complainant and school and school system staff to ensure that the IEP requirements with respect to communication between the school staff and the complainant are implemented.

The communication protocol must include steps for the maintenance of a comprehensive log of all communications with the complainant and review of the log no less than weekly by a member of the PGCPS Central Office staff who will be responsible for follow up with the school and school system staff and the complainant, as needed, to ensure that the complainant receives timely and appropriate documents and responses.

5. The communication protocol has been distributed to all IEP team members, all of the student's teachers and service providers, the student's mother, the complainant, and all PGCPS Central Office staff responsible for implementing the protocol.

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.

Ms. Trinell Bowman

August 6, 2020

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The parties maintain the right to request mediation or to file a due process complaint, if they disagree with the identification, evaluation, placement, or provision of a FAPE for the student, including issues subject to this State complaint investigation, consistent with the IDEA. The MSDE recommends that this Letter of Findings be included with any request for mediation or a due process complaint.

Sincerely,

Marcella E. Franczkowski, M.S.

Assistant State Superintendent

Division of Early Intervention/
Special Education Services

MEF/am

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