



**Mohammed Choudhury**  
State Superintendent of Schools

September 3, 2021

Aarti Sidhu, Esq.  
Megan Collins, Esq.  
Ms. Tacha Marshall  
Megan Berger, Esq.  
Leslie Seid Margolis, Esq.  
Disability Rights Maryland  
1500 Union Avenue, Suite 200  
Baltimore, Maryland 21211

Dr. Debra Y. Brooks  
Executive Director of Special Education  
Baltimore City Public School System  
200 E. North Avenue, Room 204 B  
Baltimore, Maryland 21202

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

Ms. Bobbi Pedrick  
Ms. Diane McGowan  
Co-directors of Special Education  
Anne Arundel County Public Schools  
2644 Riva Road  
Annapolis, Maryland 21401

Dr. Kathy Pierandozzi  
Executive Director  
Department of Special Education  
Baltimore County Public Schools  
Jefferson Building, 4111 Floor  
105 W. Chesapeake Avenue  
Towson, Maryland 21204

Mr. Scott Szczerbiak  
Director of Special Education  
St. Mary's County Public Schools  
23160 Moakley Street  
Leonardtown, Maryland 20650

Reference: #21-096

Dear Parties:

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

**ALLEGATIONS:**

On May 7, 2021, the MSDE received a complaint from Disability Rights Maryland, hereafter, "the complainant," on behalf of students with disabilities in Maryland. In that correspondence,

Aarti Sidhu, Esq.  
Megan Collins, Esq.  
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the complainant alleged violations of provisions of the Individuals with Disabilities Act (IDEA) with respect to the students.<sup>1</sup>

The MSDE investigated the following allegations:

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

1. The AACPS has not ensured that the Individualized Education Program (IEP) team has addressed the lack of access to virtual learning for student [REDACTED] due to the need for one-to-one support since May 7, 2020, in accordance with 34 CFR §§300.101, .320, .323, and .324.

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

2. The BCPSS has not ensured that the IEP team has addressed the lack of access to virtual learning for student [REDACTED] due to the need for one-to-one support, Behavioral Intervention Plan (BIP) supports, and a functioning assistive technology device since May 7, 2020, in accordance with 34 CFR §§300.101, .320, .323, and .324.
3. The BCPSS did not ensure that an IEP was developed for student [REDACTED] within thirty (30) days of identification as a student with a disability on January 14, 2021, in accordance with 34 CFR §300.323.
4. The BCPSS has not ensured that the IEP team has addressed the lack of access to virtual learning for student [REDACTED] due to the need for one-to-one support since March 15, 2021, in accordance with 34 CFR §§300.101, .320, .323, and .324.
5. The BCPSS has not ensured that the IEP team has addressed the lack of access to virtual learning for student [REDACTED] due to the need for behavioral support since May 7, 2020, in accordance with 34 CFR §§300.101, .320, .323, and .324.
6. The BCPSS has not ensured that the IEP team has addressed the lack of access to virtual learning for student [REDACTED] due to the need for a therapeutic assistant since May 7, 2020, in accordance with 34 CFR §§300.101, .320, .323, and .324.

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<sup>1</sup> On May 26, 2021, the complainant withdrew allegations initially raised against the Wicomico County Board of Education.

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7. The BCPSS has not ensured that the IEP team has addressed the lack of access to virtual learning for student [REDACTED] due to the need for one-to-one support since May 7, 2020, in accordance with 34 CFR §§300.101, .320, .323, and .324.
8. The BCPSS has not ensured that the IEP team has addressed the lack of access to virtual learning for student [REDACTED] since May 7, 2020, in accordance with 34 CFR §§300.101, .320, .323, and .324.
9. The BCPSS has not ensured that student [REDACTED] has been provided with Home and Hospital Teaching (HHT) services since May 7, 2020, in accordance with COMAR 13A.03.05 and 13A.05.01.

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

10. The BCPS has not ensured that the IEP team has addressed all of the needs for student [REDACTED] since May 7, 2020, in accordance with 34 CFR §§300.101, .320, .323, and .324.
11. The BCPS did not ensure that student [REDACTED] was provided with HHT services from May 7, 2020 until July 1, 2020, in accordance with COMAR 13A.03.05 and 13A.05.01.
12. The BCPS has not ensured that the IEP has addressed the lack of access to virtual learning for student [REDACTED] due to the need for behavioral support and an assistive technology device and services since August 11, 2020, in accordance with 34 CFR §§300.101, .320, .323, and .324.

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

13. The PGCPS has not ensured that the IEP has addressed the lack of access to virtual learning for student [REDACTED] due to the need for behavioral supports since May 7, 2020, in accordance with 34 CFR §§300.101, .320, .323, and .324.
14. The PGCPS did not ensure that the parent of student [REDACTED] was provided with the opportunity to participate in an IEP team meeting held in February 2021, in accordance with 34 CFR §300.322.
15. The PGCPS has not ensured that student [REDACTED] has been provided with the amount of special education instruction and related counseling and occupational therapy services required by the IEP since May 7, 2020, in accordance with 34 CFR §§300.101 and .323.

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### **St. Mary's County Public Schools (SMCPS)**

16. The SMCPS has not ensured that the IEP team has addressed the lack of access to virtual learning for student [REDACTED] due to the need for behavioral supports since May 7, 2020, in accordance with 34 CFR §§300.101, .320, .323, and .324.

### **LEGAL REQUIREMENTS:**

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

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

The USDOE further stated:

If an LEA continues to provide educational opportunities to the general student population during a school closure, the school must ensure that students with disabilities also have equal access to the same opportunities, including the provision of FAPE (*Questions and Answers on Providing Services to Children with Disabilities During the Coronavirus Disease 2019 Outbreak*, March 2020).

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

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

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

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

In order to make sure that students with disabilities are offered a FAPE, the IDEA requires that the public agency ensure that the students are identified, located, and evaluated for the need for special education, and that an IEP is developed to address the needs arising out of the disability within thirty (30) days of identification (34 CFR §§300.111 and .323).

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

An IEP is to be developed by an IEP team with parent participation. An IEP team meeting can be conducted without parent attendance if the public agency is unable to convince the parents to attend. In this case, the public agency must keep a record of its attempts to arrange a mutually-convenient time and place, such as:

- a. Detailed records of telephone calls made or attempted and the results of those calls;
- b. Copies of correspondence sent to the parent and any responses received; and
- c. Detailed records of visits made to the parent's home or place of employment and the results of those visits (34 CFR §300.322).

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

Aarti Sidhu, Esq.  
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determining that the assessment data is needed (34 CFR §§300.101, .320, .323, and .324, and COMAR 13A.05.01.06).

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

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

Each public agency must make Home and Hospital Teaching (HHT) services available to students, including students with disabilities, who are unable to attend the school of enrollment due to a physical or emotional condition. This may include a student who is unable to return for in person services once school buildings reopen as a result of a medical condition that puts the student at high risk of severe medical complications as a result of COVID-19 (COMAR 13A.03.05.03 and *Questions and Answers on Providing Services to Children with Disabilities During the Coronavirus Disease 2019 Outbreak*, March 2020).

The need for HHT services is determined by verification of the physical condition by a licensed physician or certified nurse practitioner, or verification of emotional condition by a certified school psychologist, licensed psychologist, or licensed psychiatrist (COMAR 13A.03.05.04).

If a student with a disability is unable to participate in the student's school of enrollment and is provided instruction at home because of a physical or an emotional condition, the IEP team must determine the instructional services to be provided to the student as long as the medical restrictions apply and develop a plan for returning the student to a school-based program (COMAR 13A.05.01.10). The instructional services must begin as soon as possible, but not later than ten (10) school calendar days following the notification to the public agency of the inability of the student to attend the school of enrollment and receipt of the verification of the need for services (COMAR 13A.03.05.03).

A student may require new and additional services to recover from any widening of the gap between performance and grade level expectations during virtual learning. In addition,

Aarti Sidhu, Esq.  
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compensatory services may be owed to the student if the public agency did not offer a FAPE during the period of virtual learning.

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

## **ALLEGATION #1 AACPS**

### **FINDINGS OF FACTS:**

1. The student, [REDACTED] is ten (10) years old, is identified as a student with an Intellectual Disability under the IDEA, and has an IEP that requires special education services. He attended [REDACTED] until the closure of school buildings due to the COVID-19 pandemic.
2. The student's IEP has not required the provision of one-to-one support. It has required adult support from the special education teacher and a Behavioral Intervention Plan (BIP) to assist with engagement in learning and address behaviors such as yelling and touching peers.
3. The November 13, 2020 report of the student's progress towards achievement of the annual IEP goals reflects that the student made sufficient progress towards achievement of the goals.
4. The January 29, 2021 report of the student's progress towards achievement of the annual IEP goals reflects that the student discontinued logging on to receive special education instruction virtually on January 4, 2021.
5. On February 9, 2021, the IEP team convened to address the student's lack of participation in virtual learning. The student's mother reported that she had been providing the student with assistance logging onto the computer for virtual learning and redirection, but that she was no longer able to do so due to work obligations, but that the student's sister would do so. The documentation reflects that at the meeting, the family was informed that the school building was reopening for in-person instruction two (2) days per week and that the student to teacher ratio would be approximately one-to-one. The documentation reflects that the student's mother indicated that she wanted the student to

Aarti Sidhu, Esq.  
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return four (4) days per week. However, there is no documentation that the student has been returned to in-person instruction.

6. There is an electronic mail message (email), dated February 22, 2021 from the student's mother to the school staff requesting that the school system hire the student's sister to provide one-to-one support for the student in the school building and that the school system agreed to do so. However, the family did not follow up on the offer.
7. On February 22, 2021, the student's mother also indicated in an email to the school staff that she was hesitant to return the student for in-person instruction because of concerns about the risk to the student's health if exposed to COVID-19. The documentation reflects that the school staff developed a plan to ensure the student's safety upon return to the school building and that the parent rejected the plan.
8. There is also an electronic mail message (email) among the school system staff that documents that the student's school was reopened for in-person instruction four (4) days per week in April 2021. However, the student's mother has not returned the student to in-person instruction. Following the February 2021 IEP team meeting, the student again logged on for virtual learning. However, in April 2021, the student discontinued logging on to virtual learning.

### **CONCLUSIONS:**

In this case, the complainant alleges that the AACPS has not ensured that the IEP team has addressed the inability of student [REDACTED] to access virtual learning due to the need for one-to-one support and that the annual IEP goals have not been able to be addressed during virtual learning since May 7, 2020. The complainant asserts that the only way to address the student's needs is to provide support in the student's home because the student is unable to return for in person services in the school building due to medical reasons.

Based on the Findings of Facts #1 - #8, the MSDE finds that there is no documentation that the student requires one-to-one support to benefit from virtual learning, in accordance with 34 CFR §§300.101, .320, .323, and .324.

Based on the Findings of Facts # 1 - #8, the MSDE finds that there is documentation that when the student was logged on for virtual learning, he was benefitting from visual learning, and that the AACPS took appropriate steps to make virtual learning as convenient as possible for the family, in accordance with 34 CFR §§300.101, .320, .323, and .324.

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Based on the Findings of Facts # 1 - #8, the MSDE also finds that the AACPS took appropriate steps to address the family's concern that more in-person instruction be provided in a safe environment for the student, in accordance with 34 CFR §§300.101, .320, .323, and .324. Therefore, this office does not find that a violation occurred with respect to Allegation # 1.

## **ALLEGATIONS #2 -#9      BCPSS**

**Student** [REDACTED]

### **FINDINGS OF FACTS:**

9. The student, [REDACTED] is fourteen (14) years old, is identified as a student with a Specific Learning Disability under the IDEA, and has an IEP that requires special education services. He attends [REDACTED].
10. The student's IEP includes a Behavior Intervention Plan (BIP) and the services of a therapeutic behavior aide to address the student's aggressive behaviors that pose a danger to the student and others.
11. The service log maintained from May 7, 2020 to June 12, 2020 reflects that the student was making sufficient progress with the provision of virtual learning. The log indicates that, which the student initially had difficulty accessing the virtual platform, he adjusted to virtual learning and was able to "do well completing assignments and asking for help."
12. There is documentation that an IEP team meeting was held on September 3, 2020. At that meeting, the IEP team documented that the BIP and therapeutic behavior aide services could not be provided during virtual learning, but that the services would resume once the student returned to in-person learning.
13. There is documentation that an IEP team meeting was held on December 15, 2020. At that meeting, the IEP team documented that the student was struggling with keeping up with the work in math and science. The IEP team decided that the student would be provided with additional support from the content teachers.
14. The parent contact log includes a notation from February 2021 that the student had returned to in-person learning for a period of time, but then resumed virtual learning due to his parent's concerns about his health and safety after individuals at the school tested positive for COVID-19.

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15. There is documentation that an IEP team meeting was held on August 4, 2021. At that meeting, the IEP team documented that the inability to provide adult support during virtual learning resulted in a loss of a FAPE to the student and that the student experienced "zero to decreased academic outcomes." The team decided to conduct a Functional Behavioral Assessment (FBA) in order to obtain additional data to address his interfering behavior and determined the compensatory services needed to remediate the loss of a FAPE.

### **CONCLUSIONS:**

In this case, the complainant alleges that the BCPSS has not ensured that the IEP team has addressed the inability of student [REDACTED] to access virtual learning due to the need for one-to-one support and BIP supports since May 7, 2020. The complainant also alleges that the student has not been able to access virtual learning due to inconsistent wifi and lack of a functioning modem.

Based on the Findings of Facts #9 and # 11, the MSDE finds that the BCPSS took the steps needed to address the student's lack of access to virtual learning due to technology problems, in accordance with 34 CFR §§300.101, .320, .323, and .324.

However, based on the Findings of Facts #10 and #12 - #14, the MSDE finds that the BCPSS was unable to address the student's interfering behaviors during virtual learning, in accordance with 34 CFR §§300.101, .320, .323, and .324. Therefore, this office finds that a violation occurred with respect to Allegation #2.

Notwithstanding the violation, based on the Finding of Fact #14, the MSDE finds that the school system has taken steps to address the student's interfering behavior to ensure the violation does not recur and has determined compensatory services to remediate the loss of a FAPE. Therefore, no corrective action is required.

**Student** [REDACTED]

### **FINDINGS OF FACTS:**

16. The student, [REDACTED] is thirteen (13) years old and is identified as a student with an Emotional Disability under the IDEA. While an IEP has been developed, parental consent has not been given to initiate special education services. The student attends [REDACTED].
17. On January 17, 2021, the student was identified as a student with a disability under the IDEA.

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18. On March 5, 2021, the IEP team developed an IEP.
19. The student's parent has requested one-to-one support in the home to supervise the student to ensure that she does not elope from home and that she remains logged into virtual learning. The IEP team has rejected the request based on the decision that the parent is expected to provide such supervision in the home.

### **CONCLUSIONS:**

#### **Allegation #3 Development of IEP within Timelines**

In this case, the complainant alleges that the BCPSS did not ensure that an IEP was developed for student [REDACTED] within required timelines.

Based on the Findings of Facts #16 - #18, the MSDE finds that the BCPSS did not ensure that the IEP was developed within required timelines, in accordance with 34 CFR §300.323. Therefore, this office finds that a violation occurred with respect to the Allegation #3.

Notwithstanding the violation, based on the Finding of Fact #19, the MSDE finds that the violation did not negatively impact the student's ability to benefit from the education program because the parent has not accepted the services offered. Therefore, no student-specific corrective action is required to remediate the violation.

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

The complainant also alleges that the BCPSS has not ensured that the IEP team has addressed the inability of student [REDACTED] to access virtual learning due to the need for one-to-one support since March 15, 2021.

Based on the Findings of Facts #16 - #19, the MSDE finds that there is no documentation that the student requires one-to-one support to access instruction beyond the supervision required by a parent to ensure that the student remains in the home and logged onto her computer, which is not a special education service, in accordance with 34 CFR §§300.101, .320, .323, and .324. Therefore, this office does not find that a violation occurred with respect to Allegation #4.

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**Student** [REDACTED]

**FINDINGS OF FACTS:**

20. The student, [REDACTED] is nineteen (19) years old, is identified as a student with Autism under the IDEA, and has an IEP that requires special education services.
21. The student attended [REDACTED] during the 2019-2020 school year until the Statewide closure of school buildings in March 2020 and initiation of virtual learning as a result of the COVID-19 pandemic. He transferred to the [REDACTED] for the 2020-2021 school year.
22. During the time period covered by this investigation, the IEP has required the provision of adult support to assist the student with task completion.
23. An April 2020 report of the student's progress towards achievement of the annual goals reflects that the student was making sufficient progress towards achievement of the goals.
24. A June 2020 report of the student's progress towards achievement of the annual goals reflects that the goals were not addressed during the last quarter of the 2019-2020 school year. The student's attendance summary reflects that there were 101 unexcused absences across all five (5) class periods.
25. On September 11, 2020, the IEP team convened and discussed that the student had not been consistently provided with the adult support required and determined compensatory services to redress the loss. At that meeting, the student's mother expressed concern that the student may graduate without being sufficiently prepared for post high school life and requested that the student pursue a Maryland Certificate of Completion instead of a Maryland High School Diploma and to be provided with instruction in life skills. The IEP team reviewed the data and determined that the student does not meet the criteria for a significant cognitive disability needed to support the request.
26. A November 2020 report of the student's progress towards achievement of the annual goals reflects that they were again being addressed, but that there was not sufficient time to measure progress on the goals. The student's attendance record reflects that the student was again participating in virtual learning by this time.
27. A January 2021 report of the student's progress towards achievement of the annual IEP goals reflects that the student was again making sufficient progress towards achievement of the goals.

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28. On February 16, 2021, the IEP team convened and considered information from the student's algebra teacher that the student was not attending class regularly. The team discussed that the student was being provided with adult support for virtual learning that was taking place in both the school and the student's home, and decided to add a goal for the student to attend class regularly.
29. An April 2021 report of the student's progress towards achievement of the annual IEP goals reflects that the student was continuing to make sufficient progress towards achievement of the goals.
30. An April 24, 2021 email from the student's mother to the school staff reflects the student's mother reported that virtual learning provided in the school building was not effective for the student.
31. A June 2021 report of the student's progress towards achievement of the annual IEP goals reflects that the student was continuing to make sufficient progress towards achievement of the goals.
32. On June 22, 2021, the IEP team convened. The written summary of the meeting and the progress report for that time period reflect that the student's class attendance had improved since adding the attendance goal to the IEP. The team discussed that the student had earned the credits, including service learning hours, needed to graduate with a Maryland High School Diploma. However, the team decided that the student will be provided with compensatory/recovery services in the form of transition services to address the mother's concerns about the student's preparedness for post high school life.

## **CONCLUSIONS:**

In this case, the complainant alleges that the BCPSS has not ensured that the IEP team has addressed the lack of access to virtual learning for student [REDACTED] due to the need for one-to-one support for behavior and task completion since May 7, 2020.

Based on the Findings of Facts #20 - #32, the MSDE finds that the documentation reflects that the student was provided with the adult support required by the IEP with the exception of the fourth (4<sup>th</sup>) the 2019-2020 school year, in accordance with 34 CFR §§300.101, .320, .323, and .324. Therefore, this office finds that a violation occurred with respect to Allegation #5 for that time period.

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Notwithstanding the violation, based on the Findings of Facts #20 - #32, the MSDE finds that the IEP team determined the compensatory services needed to remediate the violation in a timely manner. Therefore, no corrective action is required to remediate the violation.

In addition, based on the Findings of Facts #20 - #32, the MSDE finds that the IEP team addressed the student's lack of regular class attendance during the 2020-2021 school year, and that the student was able to make progress on the IEP goals and meet the requirements for a Maryland High School Diploma. Further, based on those Findings of Facts, the MSDE finds that the IEP team agreed to provide additional services to assist the student with his transition to post high school life in response to the mother's concerns.

**Student** [REDACTED]

**FINDINGS OF FACTS:**

33. The student, [REDACTED] is eight (8) years old, is identified as a student with Autism under the IDEA, and has an IEP that requires special education services. He attended [REDACTED] until the Statewide closure of school buildings in March 2020 and initiation of virtual learning due to the COVID-19 pandemic.
34. The student's IEP requires the support of a Therapeutic Behavioral Aide (TBA) to assist with self-injurious behavior and elopement and improving time on task. Prior to the period of virtual learning, the student spent three (3) out of five (5) school days receiving therapeutic services at the [REDACTED] ([REDACTED]).
35. The student's attendance record for the period of May 7, 2020 until June 2, 2020 reflects that the student was participating in virtual learning.
36. The IEP team convened on May 11, 2020 and documented that the student was improving his ability to manage his behavior.
37. There is documentation that from June 2, 2020 to November 24, 2020, the student was hospitalized at the [REDACTED]. While the parent was provided with forms to apply for Home and Hospital Teaching (HHT) services, there is no documentation that verification of need was provided and that an application was made for these services. Therefore, the student did not receive education services during this time period.
38. The parent contact log reflects that on December 21, 2020, the parent and teacher discussed that while instruction could again be provided to the student in the school

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Megan Collins, Esq.  
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building, the parent did not wish for him to return due to her concerns about the COVID-19 pandemic and her preference for the student to stay as isolated as possible. The log reflects the discussion that arrangements would be made for the student to be provided with support in the home.

39. A report of the student's progress towards achievement of the annual IEP goals, dated January 27, 2021, indicates that the student was again participating in virtual learning and that an Applied Behavior Analysis (ABA) technician began working with the student on January 4, 2021.
40. The parent contact log contains a notation, dated May 20, 2021, reflecting that in a discussion between the school staff and the parent, the parent reported "things seem to be going well at home" and the student "has a very good relationship with the in-home behavior aide."
41. A report of the student's progress towards achievement of the annual IEP goals, dated May 27, 2021 reflects that the student is "making nice progress" through virtual learning.
42. The documentation of an IEP team meeting held on July 6, 2021 reflects that the student is attending to instruction and making academic progress.

### **CONCLUSIONS:**

In this case, the complainant alleges that the BCPSS has not ensured that the IEP team has addressed the lack of access to virtual learning for student [REDACTED] due to his need for a therapeutic assistant to keep him safe since May 7, 2020.

Based on the Findings of Facts #33 - #42, the MSDE finds that the school system has addressed the student's need for therapeutic support, in accordance with 34 CFR §§300.101, .320, .323, and .324. Therefore, this office does not find that a violation occurred with respect to Allegation #6.

**Student** [REDACTED]

### **FINDINGS OF FACTS:**

43. The student, [REDACTED] is seventeen (17) years old, is identified as a student with an Other Health Impairment under the IDEA, and has an IEP that requires special education services. The student attended [REDACTED] until the closure of school buildings in March 2020 and initiation of virtual learning as a result of the COVID-19 pandemic.

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44. The student's IEP requires the provision of counseling from the social worker and assistance from the IEP Case Manager with task completion.
45. A service log maintained by the school staff documents that in May 2020 the student was not regularly logged in to receive virtual learning, including classes and tutoring sessions that were scheduled.
46. On June 3, 2020, the IEP team convened and considered information from the student's parent that the student was having difficulty shifting to a new routine and new expectations, and was refusing to participate in virtual learning. The IEP team revised the IEP to include goals for the student to improve his organization and time management as well as his coping skills. The team also decided that an assignment tracking system would be developed to assist the student with task completion and discussed that the student has access to the IEP Case Manager to obtain assistance, as needed.
47. The student's report card reflects that he passed all of his classes during the 2019-2020 school year.
48. A social work report, dated October 27, 2020, reflects a notation that the student rarely utilizes the adult support offered, but that the student feels more securing knowing the support is in place.
49. In November 2020 and January 12, 2021, reports of the student's progress towards achievement of the annual IEP goals stated that the student was not making sufficient progress towards achievement of the goals due to the student's lack of engagement and participation.
50. There are electronic mail messages (emails) from the school system staff to the student's parent offering to resume in-person instruction for the student. However, there is no evidence that the student's parent has returned the student to school for in-person instruction.
51. The IEP team is scheduled to meet again in September 2021 to attempt to address the student's lack of participation.

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## **CONCLUSIONS:**

In this case, the complainant alleges that the BCPSS has not ensured that the IEP team has addressed the lack of access to virtual learning for student [REDACTED] due to his need for one-to-one support since May 7, 2020.

Based on the Findings of Facts #43 - #51, the MSDE finds that the BCPSS has taken appropriate steps to address the student's lack of participation in virtual learning and has offered to resume in-person instruction, in accordance with 34 CFR §§300.101, .320, .323, and .324. Therefore, this office does not find that a violation occurred with respect to Allegation #7.

**Student** [REDACTED]

## **FINDINGS OF FACTS:**

52. The student, [REDACTED] is twenty-one (21) years old, is identified as a student with an Intellectual Disability under the IDEA, and has an IEP that requires special education services.
53. At the start of the time period covered by this investigation, the student attended [REDACTED]. During the 2019-2020 school year, the student transferred to [REDACTED].
54. The student began receiving special education instruction through virtual learning in March 2020 as a result of the COVID-19 pandemic. She exited the school system with a Maryland Certification of Completion at the end of the 2020-2021 school year.
55. The student's attendance record reflects that, prior to the initiation of virtual learning, she did not attend school regularly.
56. The parent contact log reflects that the student's teachers reported to her parent that the student was observed to be sleeping through classroom instruction that was offered virtually.
57. The documentation of an IEP team meeting held on May 25, 2021 reflects that the IEP team discussed that the student does not attend class regularly.
58. A June 7, 2021 report of a psychological assessment reflects that the student has frequently missed class due to medical appointments and health issues.

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59. There is no documentation of verification of the student's inability to participate in a school-based program due to a medical or emotional condition.
60. The documentation of an IEP team meeting held on June 7, 2021 reflects that the IEP team discussed that, while the student was offered a FAPE, she did not receive it because she did not regularly participate in virtual learning. The documentation reflects that the IEP team offered eighty (80) hours of compensatory/recovery services to be provided following the student's exit from the school system at the end of the 2020-2021 school year.

## **CONCLUSIONS:**

### **Allegation #8 Addressing Lack of Access to Virtual Learning**

In this case, the complainant alleges that the BCPSS has not ensured that the IEP team has addressed the lack of access to virtual learning for student [REDACTED] since May 7, 2020.

Based on the Findings of Facts #52 - #60, the MSDE finds that there is no documentation that the student was unable to access the virtual learning that was offered if she was provided with the necessary supervision to ensure that she logged on and remained awake through classroom instruction, in accordance with 34 CFR §§300.101, .320, .323, and .324. Therefore, this office does not find that a violation occurred with respect to Allegation #8.

### **Allegation #9 Home and Hospital Teaching (HHT) Services**

The complainant also alleges that the BCPSS has not ensured that the student [REDACTED] has been provided with HHT services required since May 7, 2020.

Based on the Findings of Facts #52 - #60, the MSDE finds that there is no documentation of verification of the student's inability to attend a school-based program due to a medical or emotional issue, which was needed in order to provide HHT services, in accordance with COMAR 13A.03.05 and 13A.05.01. Therefore, this office does not find that a violation occurred with respect to Allegation #9.

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## **ALLEGATIONS #10 - #12 BCPS**

**Student** [REDACTED]

### **FINDINGS OF FACTS:**

61. The student, [REDACTED] is twenty-one (21) years old, is identified as a student with Multiple Disabilities under the IDEA, including Autism and an Other Health Impairment as a result of Attention Deficit Hyperactivity Disorder (ADHD) and has an IEP that requires special education services. He attended [REDACTED] during the time period covered by this investigation.
62. On April 6, 2020, the IEP was amended with parent agreement to require the provision of the following:
  - One (1) thirty (30) minute session of special education instruction per day in a separate special education classroom to address reading, math, and social skills;
  - Two (2) thirty (30) minute sessions of special education instruction per week in social studies and English in the separate special education classroom;
  - One (1) thirty (30) minute session of special education instruction per week in art in the general education classroom; and
  - One (1) weekly check-in by a special education teacher to provide consultative services to the parent and social, emotional support for the student.
63. Prior to the April 6, 2020 amendment, the IEP required the following:
  - Seventy (70) one (1) hour twenty-five (25) minute sessions of special education instruction per month in the separate special education classroom to address all academic, elective, and community-based areas;
  - One (1) thirty (30) minute session of special education instruction per week in the separate special education classroom to address social skills in a small group setting;
  - Ten (10) one (1) hour twenty-five (25) minute sessions of special education instruction per month in the general education classroom for one (1) elective course;
  - One (1) hour per year of career and technical education;

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- One (1) thirty (30) minute sessions per month of occupational therapy; and
  - Five (5) thirty (30) minute sessions per week of speech/language therapy.
64. There is no documentation of how the reduction in services from the April 6, 2020 amendment was designed to address the student's needs.
65. On April 29, 2021, the IEP team reviewed and revised the IEP consistent with updated assessment data on the student's performance obtained through March 20, 2021 and reports of the students progress that he had made sufficient progress on the IEP goals.
66. On May 3 and 17, 2021, the IEP team met. The school-based members of the team reported that the student made sufficient progress towards achievement of the annual goals even with the reduction in services, and thus there was no negative impact on the student's ability to benefit from the education program. The parent disagreed, and the team decided to provide compensatory/recovery services as a result of the reduction in services during the period of virtual learning.

### **CONCLUSIONS:**

In this case, the complainant alleges that the BCPS has not ensured that the IEP team has addressed the needs of student [REDACTED] since May 7, 2020.

Based on the Findings of Facts #61 - #64, the MSDE finds that there is no documentation that the IEP was amended on April 6, 2020 based on the student's needs, in accordance with 34 CFR §§300.101, .320, .323, and .324.

However, based on Finding of Fact #65, the MSDE finds that the IEP was subsequently revised based on assessment data regarding the student's needs on April 29, 2021, in accordance with 34 CFR §§300.101, .320, .323, and .324. Therefore, this office finds that a violation occurred with respect to Allegation #10 from May 7, 2020 until April 29, 2021.

Notwithstanding the violation, based on the Finding of Fact #66, the MSDE finds that the IEP team found data that the student was able to make sufficient progress towards achievement of the annual IEP goals despite the reduction in services, and determined that services would be provided to remediate the violation. Therefore, no student-specific corrective action is required to remediate the violation.

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**Student** [REDACTED]

**FINDINGS OF FACTS:**

67. The student, [REDACTED] is sixteen (16) years old, is identified as a student with Multiple Disabilities under the IDEA, including an Emotional Disability, a Specific Learning Disability, and a Visual Impairment. The student has an IEP that requires special education services.
68. At the start of the time period covered by this investigation, virtual learning was provided as a result of the closure of school buildings due to the COVID-19 pandemic. At that time the student was placed by the BCPS at [REDACTED], a nonpublic separate special education school. There is documentation that HHT services were initiated for the student beginning April 22, 2020 while placed at this school.
69. Since July 1, 2020, the BCPS has placed the student at the [REDACTED] [REDACTED] another nonpublic separate special education school.
70. An Annual Review Report, dated August 7, 2020, states that the student was passing all classes except Read 180, which is provided exclusively through a computer. The report states that the student's laptop had been out for services during the summer session and that it was expected that it would be repaired by the second week of classes. In the meantime, the student was using his mother's laptop to receive the Read 180 instruction. The Report also documents that the student's mother had difficulty waking him up in the morning, which was impacting his class attendance.
71. A document entitled "Periodic Team Notes," dated August 11, 2020, reflects that the team discussed that the student's mother was unable to address his interfering behaviors during virtual learning and that his laptop was not consistently working. The school principal agreed to obtain another laptop. The complainant requested one-to-one support in the home with virtual learning, which was denied based on the school staff's report that there was a team of school staff providing supports to the student virtually and that he is passing all of his classes.
72. A document entitled "Periodic Team Notes," dated November 6, 2020, reflects that the team "discussed a virtual 1:1 and the level of engagement at 5 hours per week" was insufficient as the student requires continuous prompting, encouragement, and check-ins to remain focused and engaged. The team decided that one-to-one support is required during all core content classes for virtual learning.

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73. On March 16, 2021, the student began receiving education services virtually and in the school building.
74. An Annual Review Report, dated March 31, 2021, states that the student was failing all classes except English 10. It states that the student has difficulty staying connected to virtual learning, and that he was trying to make up his work during in-person learning.
75. A document entitled "Periodic Team Notes," dated April 8, 2021, reflects that the team discussed the student's ongoing technology problems. The mother reported that she had service providers expand their internet service. The school staff reported that the student's laptop had been replaced multiple times, and that the information technology staff had checked the laptop, both virtually and in-person. The team agreed to continue to attempt to address the problem. However, there is no documentation that the team considered low or no tech supports to assist the student.

## **CONCLUSIONS:**

### **Allegation #11      HHT Services**

In this case, the complainant alleges that the BCPS did not ensure that the student [REDACTED] was provided with HHT services from May 7, 2020 until July 1, 2020.

Based on the Findings of Facts #67 - #69, the MSDE finds that the documentation does not support the allegation that HHT services were not provided, in accordance with COMAR 13A.03.05 and 13A.05.01. Therefore, this office does not find that a violation occurred with respect to Allegation # 11.

### **Allegation #12      Addressing Lack of Access to Virtual Learning**

In this case, the complainant alleges that the BCPS has not ensured that the IEP team has addressed the lack of access to virtual learning for student [REDACTED] due to his need for behavioral support and an assistive technology device and services since August 11, 2020.

Based on the Findings of Facts #70 - #75, the MSDE finds that the documentation supports the allegation that the school system has not addressed the student's lack of access to virtual learning, in accordance with 34 CFR §§300.101, .320, .323, and .324. Therefore, this office finds that a violation occurred with respect to Allegation # 12.

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Leslie Seid Margolis, Esq.  
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## **ALLEGATIONS #13 - #15 PGCPS**

### **FINDINGS OF FACTS:**

76. The student, [REDACTED] is 13 years old, is identified as a student with an Emotional Disability under the IDEA, and has an IEP that requires special education services. He attended [REDACTED] until the closure of school buildings due to the COVID-19 pandemic.
77. The student's IEP requires the provision of special education instruction and related occupational and counseling services. The counseling services were designed to reduce instances of physical and verbal aggression by the student to improve his interpersonal relationships with peers and teachers.
78. The Special Education Continuity of Learning Service Log and Parent Contact Log document that the student is being supervised during the school day by a grandparent.
79. The Special Education Continuity of Learning Service Log documents that many unsuccessful efforts were made to contact the parents and the grandparent by telephone and email through the month of April 2020 to engage the student in virtual learning.
80. The Parent Contact Log documents that the family was provided with information on where to obtain a technology device to access virtual learning, and it was noted on May 20, 2020, the family informed the school system that they were not interested in obtaining a device. Therefore, written instructional materials and work assignments were made available to the family.
81. A notation in the occupational therapist's log, dated May 27, 2020, documents that unsuccessful attempts made by the occupational therapist and case manager to reach the student.
82. The reports of the student's progress towards achievement of the annual IEP goals, made in June 2020, document that the family was offered an assistive technology device, but did not accept it, and that the student was not making progress because he was not accessing virtual learning.
83. A notation in the occupational therapist's log, dated September 9, 2020, documents that, at that time, the occupational therapist was able to connect with the student and worked with him to assist with setting up his own computer, and provided him with direction on how to access links to participate in virtual classes. There is documentation that special

Aarti Sidhu, Esq.  
Megan Collins, Esq.  
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education instruction and occupational therapy services have been offered to the student since that time, but that the student does not consistently log on to participate in service provision.

84. There is no documentation of attempts to provide the student with the related services of counseling through alternative methods to virtual learning, such as through telephone calls.
85. An IEP team meeting was held on February 4, 2021 at which time revisions were made to the IEP. The parent did not participate in the meeting.
86. There is documentation that on January 15 and 26, 2021, the parent was provided with a written invitation to an IEP team meeting scheduled for February 4, 2021. However, there is no documentation of telephone calls made or visits to the parent to ensure her participation in the February 4, 2021 IEP team meeting.
87. There is documentation that the IEP team reconvened with parent participation on April 6, 2021 to review the decisions made by the team on February 4, 2021, at which time further revisions were made to the IEP.
88. There is documentation of the student's participation in virtual instruction during the 2020-2021 school year; however, attendance was inconsistent and numerous unlawful absences are documented throughout the year.
89. The PGCPS reports that it is offering families both in-person and virtual learning for the 2021-2022 school year, and that it has not received information from the family about their choice of service delivery for the student.

## **CONCLUSIONS:**

### **Allegation #13      Addressing the Lack of Access to Virtual Learning**

In this case, the complainant alleges that the PGCPS has not ensured that the IEP team has addressed the lack of access to virtual learning for student [REDACTED] due to the need for behavioral supports since May 7, 2020.

Based on the Findings of Facts #76 - #83, #88, and #89 the MSDE finds that the school system took appropriate steps to convince the family to access special education and occupational therapy services through virtual learning and offered no tech options when it was rejected during the 2019-2020 school year.

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Further, based on the Findings of Facts #76 - #83, #88, and #89, the MSDE finds that the school system has continued to attempt to provide special education instruction and occupational therapy services to the student during the 2020-2021 school year.

However, based on the Findings of Facts #77 and #84, the MSDE finds that there is no documentation that the school system took appropriate steps to offer counseling services, in accordance with 34 CFR §§300.101, .320, .323, and .324. Therefore, this office finds that a violation occurred with respect to this aspect of Allegation # 13.

#### **Allegation #14      Parent Participation in a February 2021 IEP Team Meeting**

In this case, the complainant alleges that the parent of student [REDACTED] was not provided with the opportunity to participate in an IEP team meeting held in February 2021.

Based on the Findings of Facts #85 and #86, the MSDE finds that the PGCPS did not take appropriate steps to ensure parent participation in the IEP team meeting held on February 4, 2021, in accordance with 34 CFR §300322. Therefore, this office finds that a violation occurred with respect to Allegation # 14.

Notwithstanding the violation, based on the Finding of Fact #87, the MSDE finds that the IEP team subsequently met with parent participation to review the decisions made on February 4, 2021. Therefore, no student-specific corrective is required to remediate this violation.

#### **Allegation #15      IEP Implementation**

In this case, the complainant alleges that the PGCPS has not ensured that the student [REDACTED] has been provided with the amount of special education instruction and related counseling and occupational therapy services required by the IEP since May 7, 2020.

Based on the Findings of Facts #(insert), the MSDE finds that the school system offered the student the special education and occupational therapy services required by the IEP, but they have not been accepted. Therefore, this office does not find that a violation occurred with respect to these aspects of Allegation #15.

However, based on the Findings of Facts #(insert), the MSDE finds that there is no documentation that the student has been offered the counseling services required by the IEP, in accordance with 34 CFR §§300.101 and .323. Therefore, this office finds that a violation occurred with respect to this aspect of Allegation #15.

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**ALLEGATION #16            SMCPS**

**FINDINGS OF FACTS:**

90. The student, [REDACTED] is sixteen (16) years old, is identified as a student with an Other Health Impairment under the IDEA related to Attention Deficit Hyperactivity Disorder (ADHD), and has an IEP that requires special education services. He attends [REDACTED].
91. The student's IEP has not required the provision of one-to-one support. It has required that the student's teacher provide him with written notes if he falls behind in class. There is no documentation that the student has fallen behind in class during the period of virtual learning.
92. There are text messages between the student's mother and the IEP Chairperson reflecting that, on April 28, 2020, the student's mother requested that the student be provided with written notes of all instruction provided virtually and that the school staff responded that, while notes could be provided they would not reflect all of the material in the instruction.
93. The parent contact log documents that, on August 31, 2020, the school staff offered to provide the student with one-to-one time with his teacher, but the mother rejected the offer because she did not want the student to feel singled out for special attention.
94. The IEP Case Manager's logs reflect that in September 2020, one-to-one meetings were scheduled with the student to review his calendar, coursework, and his grades. The documentation reflects that the student did not log on to scheduled meetings with the IEP Case Manager on September 22, 2020, October 8, 2020, October 15, 2020, and October 22, 2020. There are emails between the school staff and the student's mother, dated January 27 and 29, 2021, reflecting that the student's mother indicated that she did not wish for the school staff to continue to offer the student with one-to-one meetings.
95. The parent contact log documents that, on October 13, 2020, the student's mother requested that the student be offered participation in a small group for extra support during times when virtual instruction was not being provided, and the school staff informed her that this has been available to the student.
96. There is documentation that, at an IEP team meeting held on December 3, 2020, the student's mother expressed concern about the student's participation in virtual learning because he has a seizure disorder and viewing a computer screen could possibly bring on a seizure. The mother also reported that the student would visit internet sites such as

Aarti Sidhu, Esq.  
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YouTube while he was supposed to be logged on to classroom instruction due to his ADHD, and that the school system agreed to disable internet sites. The student's mother requested one-to-one assistance with keeping the student logged onto the virtual classroom, which was rejected by the team based on data that the student was able to access instruction without this support with appropriate supervision to ensure that he is logged onto the classroom instruction site.

97. There is documentation that on January 13, 2021, the IEP was revised to require that the student be provided with printed material covered through virtual learning.
98. There is no evidence that the student has experienced a seizure as a result of logging onto the computer for virtual learning.
99. On March 1, 2021, the student returned to in-person instruction two (2) days per week. On April 12, 2021, this was increased to four (4) days per week.
100. The reports of the student's progress towards achievement of the annual IEP goals reflects that the student has made sufficient progress towards achievement of the annual goals.
101. There is documentation that the student passed all of his classes during the 2019-2020 and 2020-2021 school year. However, the parent contact log reflects that the school staff agreed to the parent's request for a refresher course to reinforce skills learned in an algebra 1 course he took and passed. While the student passed the course, the student's mother requested a refresher course in order to address her concerns about whether he mastered the content sufficiently through virtual learning.

## **CONCLUSIONS:**

In this case, the complainant alleges that the SMCPS has not ensured that the IEP team has addressed the lack of access to virtual learning for student [REDACTED] due to the need for one-to-one support since May 7, 2020.

Based on the Findings of Facts #90 - #101, the MSDE finds that there is no documentation that the student required one-to-one support to access virtual learning, in accordance with 34 CFR §§300.101, .320, .323, and .324.

Based on the Findings of Facts #90 - #101, the MSDE finds that the student has been offered supports including one-to-one meetings with the school staff, which were declined and that the student made sufficient progress towards achievement of the annual IEP goals during the period

Aarti Sidhu, Esq.  
Megan Collins, Esq.  
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of virtual learning in accordance with 34 CFR §§300.101, .320, .323, and .324. Therefore, this office does not find that a violation occurred with respect to Allegation # 16.

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

The IDEA requires that State complaint procedures include those for effective implementation of the decisions made as a result of a State complaint investigation, including technical assistance activities, negotiations, and corrective actions to achieve compliance (34 CFR §300.152). Accordingly, the MSDE requires the public agencies to provide documentation of the completion of the corrective actions listed below<sup>2</sup>

This office will follow up with the public agencies to ensure that they complete the required actions consistent with the MSDE Special Education State Complaint Resolution Procedures. If any public agency anticipates that the timeframe below may not be met, or if any of the parties seeks technical assistance, they should contact Dr. Nancy Birenbaum, Compliance Specialist, Family Support and Dispute Resolution Branch, MSDE, to ensure the effective implementation of the action.<sup>3</sup> Dr. Birenbaum can be reached at (410) 767-7770.

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

#### **School-Based**

The MSDE requires the BCPS to provide documentation of the steps taken at [REDACTED] to ensure that an initial IEP is developed within the required timelines.

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

#### **Student [REDACTED] School-Based**

The MSDE requires the BCPS to provide documentation of the steps taken at [REDACTED] to ensure that IEPs are amended based on student needs.

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<sup>2</sup> The OSEP states that the public agency must correct noncompliance in a timely manner, which is as soon as possible, but not later than one (1) year from the date of identification of the noncompliance. The OSEP has indicated that, in some circumstances, providing the remedy could take more than one (1) year to complete. If noncompliance is not corrected in a timely manner, the MSDE is required to provide technical assistance to the public agency, and take tiered enforcement action, involving progressive steps that could result in the redirecting, targeting, or withholding of funds, as appropriate.

<sup>3</sup> The MSDE will notify the Directors of Special Education of any corrective action that has not been completed within the required timelines.

Aarti Sidhu, Esq.  
Megan Collins, Esq.  
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### **System-Based**

The MSDE requires the BCPS to provide documentation of the steps taken to ensure that IEP teams for students placed at [REDACTED] who have not been able to access visual learning review and revise the IEP to address the students' needs and determine the compensatory services or other remedy for the loss of services.

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

#### **Student [REDACTED]**

The MSDE requires the PGCPS to provide documentation that the related counseling services required by the IEP are being offered to the student.

The MSDE further requires the PGCPS to provide documentation that the IEP team has reviewed and revised the IEP based on data regarding the student's current social-emotional functioning and determined the compensatory services or other remedy for the loss of related counseling services.

#### **School-Based**

The MSDE requires the PGCPS to provide documentation of the steps taken at [REDACTED] to ensure that students with disabilities are provided with the amount of related counseling services required by the IEP and that parents are provided with the opportunity to participate in IEP team meetings.

As of the date of this correspondence, this Letter of Findings is considered final. This office will not reconsider the conclusions reached in this Letter of Findings unless new, previously unavailable documentation is submitted and received by this office within fifteen (15) days of the date of this correspondence.

The new documentation must support a written request for reconsideration, and the written request must include a compelling reason for why the documentation was not made available during the investigation. Pending this office's decision on a request for reconsideration, the public agency must implement any corrective actions within the timelines reported in this Letter of Findings.

The parents and public agencies maintain the right to request mediation or to file a due process complaint, if they disagree with the identification, evaluation, placement, or provision of a FAPE for the students, including issues subject to this State complaint investigation, consistent with the

Aarti Sidhu, Esq.  
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IDEA. The MSDE recommends that this Letter of Findings be included with any request for mediation or a due process complaint.

Sincerely,

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

c: George Arlotta  
Darryl L. Williams  
Monica Goldson  
Conya Bailey  
Alison Barmat  
Jason Miller  
Barbara VanDyke  
Sonja B. Santelises  
Charlene Harris  
Gail Viens  
Christina McGonigal  
Donna C. Hanlin  
J. Scott Smith