

October 31, 2020

The Honorable Lawrence J. Hogan, Jr.  
Governor of Maryland  
100 State Circle  
Annapolis, Maryland 21401

Re: Special Education State Complaint for [REDACTED]

Dear Governor Hogan:

I am writing to file a complaint on behalf of my son [REDACTED] (the Student), regarding his education in the state of Maryland (the State). I believe that the Maryland State Department of Education (the "State Educational Agency" or the "SEA") and the State are in violation of certain requirements in the Individuals with Disabilities Education Act (IDEA or the "Act"), its implementing regulations at 34 C.F.R. §300 (the Regulations) and related Code of Maryland Regulations (COMAR). This complaint is filed under 34 C.F.R. §300.153 and COMAR 13A.05.01.15, against the SEA and the State. I will be referred to as the "Complainant" hereafter.

The details about the complaint are as follows:

**Student Information:**

*Student's Name:* [REDACTED]

*Date of Birth:* [REDACTED]

*Address:* [REDACTED]

*Local Educational Agency (LEA):* Prince George's County Public Schools (PGCPS)

*School the student is currently attending:* [REDACTED]

*School(s) the student attended when violation(s) occurred:* [REDACTED]

[REDACTED] (Placed by the PGCPS)

**Student Background:**

The Student is a fifteen (15) years old boy with Autism and Epilepsy, and is a child with disability under the IDEA. The Prince George's County Public Schools (the LEA) placed the Student at the [REDACTED] (the School), a non-public separate day school in the State, to receive Free Appropriate Public Education (FAPE).

**Legal Standards:**

1. The IDEA implementing regulations at 34 C.F.R. §300.101 requires that a free appropriate public education must be available to all children residing in the State between the ages of 3 and 21;
2. The IDEA implementing regulations at 34 C.F.R. §300.152(a)(4) requires that each SEA must include in its complaint procedures a time limit of 60 days after a complaint is filed under 34 C.F.R. §300.153 to review all relevant information and make an independent determination as to whether the public agency is violating a requirement of Part B of the Act or of 34 C.F.R. §300;
3. The IDEA implementing regulations at 34 C.F.R. §300.152(a)(5) requires that each SEA must include in its complaint procedures a time limit of 60 days after a complaint is filed under 34 C.F.R. §300.153 to issue a written decision to the complainant that addresses each allegation in the complaint;
4. The IDEA implementing regulations at 34 C.F.R. §300.600(a)(1) requires that the State must monitor the implementation of 34 C.F.R. §300;
5. The IDEA implementing regulations at 34 C.F.R. §300.600(b) requires that the primary focus of the State's monitoring activities must be on improving educational results and functional outcomes for all children with disabilities; and ensuring that public agencies meet the program requirements under Part B of the Act, with a particular emphasis on those requirements that are most closely related to improving educational results for children with disabilities;
6. The IDEA implementing regulations at 34 C.F.R. §300.503(a)(1) requires that written notice that meets the requirements of 34 C.F.R. §300.503(b) must be given to the parents of a child with a disability a reasonable time before the public agency proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child; There is no exception in the Regulations that certain proposals can be omitted in the written notice;
7. The IDEA implementing regulations at 34 C.F.R. §300.503(a)(2) requires that written notice that meets the requirements of 34 C.F.R. §300.503(b) must be

given to the parents of a child with a disability a reasonable time before the public agency refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child; There is no exception in the Regulations that certain refusals can be omitted in the written notice;

8. The IDEA implementing regulations at 34 C.F.R. §300.503(b)(1) requires that content of notice described under 34 C.F.R. §300.503(a) must include a description of the action proposed or refused by the agency;
9. The IDEA implementing regulations at 34 C.F.R. §300.503(b)(2) requires that content of notice described under 34 C.F.R. §300.503(a) must include an explanation of why the agency proposes or refuses to take the action;
10. The IDEA implementing regulations at 34 C.F.R. §300.503(b)(3) requires that content of notice described under 34 C.F.R. §300.503(a) must include a description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action;
11. The IDEA implementing regulations at 34 C.F.R. §300.503(b)(6) requires that content of notice described under 34 C.F.R. §300.503(a) must include a description of other options that the IEP Team considered and the reasons why those options were rejected;
12. The IDEA implementing regulations at 34 C.F.R. §300.503(b)(7) requires that content of notice described under 34 C.F.R. §300.503(a) must include a description of other factors that are relevant to the agency's proposal or refusal;
13. The IDEA implementing regulations at 34 C.F.R. §300.500 requires that each SEA must ensure that each public agency establishes, maintains, and implements procedural safeguards that meet the requirements of 34 C.F.R. §§ 300.500 through 300.536;
14. The IDEA implementing regulations at 34 C.F.R. §300.121(a) requires that the State must have procedural safeguards in effect to ensure that each public agency in the State meets the requirements of 34 C.F.R. §§ 300.500 through 300.536;
15. The IDEA implementing regulations at 34 C.F.R. §300.121(b) requires that children with disabilities and their parents must be afforded the procedural safeguards identified in 34 C.F.R. §300.121(a);
16. Pursuant to 34 C.F.R. §300.33 and section 612(a)(11) of the Act, the term public agency includes the SEA. The SEA must, therefore, resolve any complaint against the SEA pursuant to the SEA's adopted State complaint procedures. The SEA, however, may either appoint its own personnel to resolve the complaint, or may make arrangements with an outside party to resolve the complaint. If it chooses to use an outside party, however, the SEA remains responsible for complying with

all procedural and remediation steps required in part 300. (Analysis of Comments and Changes to IDEA, *Federal Register*, Vol. 71, No. 156, p. 46602, August 14, 2006).

**Background:**

1. On July 15, 2020; July 21, 2020; and July 23, 2020; the Complainant filed a complaint, pursuant to 34 C.F.R. §300.153 and COMAR 13A.05.01.15 (collectively, the “Complaint”), with the SEA alleging that the LEA violated certain provisions of the IDEA and its implementing regulations at 34 C.F.R. §300 and related COMAR. The Complaint was addressed to Ms. Marcella E. Franczkowski, Assistant State Superintendent, Division of Special Education/Early Intervention Services (the Division) within the SEA (hereafter the “Superintendent”);
2. One of the allegation in the Complaint was that the LEA did not provide the Student's parents with a proper Prior Written Notice (PWN) for the determinations made at the Individualized Education Program (IEP) meeting held on June 09, 2020 (the IEP Meeting), in accordance with 34 CFR §300.503 and COMAR 13A.05.01.12 (the Allegation);
3. The IEP Meeting was audio recorded. As evidenced by the audio recording of the IEP Meeting and PWN, there were several proposals and refusals of FAPE, which were made by the LEA during the IEP Meeting, but were not documented in the PWN. There were also several consideration of other factors at the IEP Meeting, but were not documented in the PWN. There were some provisions of FAPE documented in the IEP developed after the IEP Meeting, but were not addressed in the PWN. There were proposals and refusal of FAPE made by the LEA at the IEP Meeting which were neither documented in the IEP nor in the PWN;
4. On July 27, 2020, Ms. Dori Wilson, Chief, Family Support and Dispute Resolution Branch within the Division (hereafter the “Branch Chief”) wrote a letter to the Complainant informing him that the SEA planned to investigate the Allegation and identified Ms. Anita Mandis, Section Chief, Complaint Investigation Section within the Division (hereafter the “Section Chief” or the “Chief”) as the investigator;
5. During investigation of an earlier complaint, the Chief informed the Complainant that she was aware of a practice in the State where LEAs “check things off” in the Prior Written Notices (PWNs). She informed the Complainant that audio recordings of the IEP Meetings are very useful for the Chief and other staff at the SEA, but did not indicate what was it useful for. At the same time, the

Complainant inquired whether the Chief was working from home due to the COVID-19 pandemic. The Chief responded that she was “remote”;

6. On August 11, 2020, the Complainant provided audio recording of the IEP Meeting and requested the Chief that she listen to the audio recordings carefully and pay attention while listening. The Complainant also reminded the Chief that he knew that the Chief was working remote and requested the Chief to make sure that she did not have any background talks/noise while listening to the audio recordings;
7. On August 12, 2020, the Chief responded to the Complainant that there were no background noises, talking or other distractions present in her remote workplace. The Chief also requested the Complainant that he identify the things Chief was not hearing;
8. On the same date, the Complainant informed the Chief that he was unable to verify the Chief's hearing and he was not qualified to do such tests. The Complainant also informed the Chief that she would have to contact her medical provider to have such tests conducted, if she intend to pursue it. The Complainant also shared these messages with the Superintendent and the Branch Chief at the same time. As of the date of this letter the Chief has not shown an intend to pursue it;
9. On August 13, 2020, the Chief informed the Complainant that she reviewed the audio recording of the IEP Meeting along with the written summary of the meeting and the IEP that was developed and she did not “see” where any of the decisions that were made by the team about the student's program were not reflected in the written summary and IEP;
10. On August 20, 2020, the Complainant informed the Chief that he reviewed the Chief's August 13, 2020 email and he was not sure what the Superintendent and/or the Branch Chief asked the Chief to do and what violation/allegation she was investigating about. The Complainant also informed the Chief that he reviewed the Allegation, double checked the information that was provided to the Chief, which included the audio recording of the IEP Meeting; and based on his review, the Allegation was still valid and the records he provided to the Chief had information that supported the Allegation. The Complainant also suggested to the Chief that if she was not hearing it, another staff of the SEA double check it. He also reminded the Chief that he indicated in his previous emails that careful and proper listening and processing of the audio recording is required for proper processing of the Complaint; The Complainant provided the following examples of items not addressed in the PWN:

- (a) The Student's parents requested that the fecal/stool smearing behavior be tracked as part of the BIP. The [LEA] refused [to] include it, falsely claiming that they were not seeing the stool smearing behavior.
- (b) [The Complainant] requested direct OT services. The [LEA] refused to provide it.
- (c) There was a decision that no IEP meeting is required to administer the medicine once the physician's order is provided.
- (d) The Student's parents requested to include toileting and independent use of toilet as a transition activity, but the [LEA] refused to include it as a transition activity.

The Complainant also informed the Chief that the above list was not a complete list and she still had to properly listen to the audio recording of the IEP Meeting;

11. On August 31, 2020, the Complainant informed the Chief that the following additional items were not addressed in the PWN:
- (a) IEP team conversation is required to develop the contents of Appendix A regarding alternate assessments, and not just review offline, as part of the annual review;
  - (b) All the team members will sign off on Appendix A before it is sent to the Student's parents for signature;
  - (c) The Student's parents requested that that in addition to the ABC chart the Student's accidents be tracked to distinguish between urinary accidents and bowel movements, or whether the Student purposely smearing stool. The Student's parents also requested that the data should also indicate whether the Student threw the stool. It was agreed that these data will be provided as part of daily report to the Student's parents;
  - (d) The provision of ABC chart and providing it the Student's parents daily were agreed;
  - (e) Providing the Student's number of bowel movements to the Student's parents on a daily basis was agreed; and
  - (f) It was agreed to track distractability and food seeking behavior as part of BIP;
12. On September 10, 2020 the Superintendent wrote a letter (the Letter), addressed to Ms. Trinell Bowman, Executive Director of Special Education at the LEA and the Complainant asserting that the SEA completed investigation of the Complaint;
13. The Superintendent acknowledged in the Letter that she understood from Office of Special Education Programs (OSEP) within the United States Department of Education (the Department) and Courts that audio recording was something that

- can be listened to again and again, but did not indicate whether the Chief, the Branch Chief, the Superintendent or another staff at the SEA did that;
14. The Superintendent also acknowledged in the Letter that she understood from Federal Register that PWN must be provided in writing;
15. The Superintendent did not mention in the Letter whether the LEA addressed the following items in the PWN:
- (a) The Student's parents requested that the fecal/stool smearing behavior be tracked as part of the BIP. The [LEA] refused include it;
  - (b) [The Complainant] requested direct OT services. The [LEA] refused to provide it;
  - (c) The Student's parents requested to include toileting and independent use of toilet as a transition activity, but the [LEA] refused to include it as a transition activity;
  - (d) The Student's parents requested that that in addition to the ABC chart the Student's accidents be tracked to distinguish between urinary accidents and bowel movements, or whether the Student purposely smearing stool. The Student's parents also requested that the data should also indicate whether the Student threw the stool. It was agreed that these data will be provided as part of daily report to the Student's parents;
  - (e) The provision of ABC chart and providing it the Student's parents daily were agreed;
  - (f) Providing the Student's number of bowel movements to the Student's parents on a daily basis was agreed;
  - (g) It was agreed to track distractability and food seeking behavior as part of BIP;
  - (h) Other provisions of FAPE which were proposed and/or refused by the LEA at the IEP Meeting and were not documented in the PWN consistent with requirements described under the Legal Standards in this letter; or
  - (i) Other provisions of FAPE which were proposed and/or refused by the LEA at the IEP Meeting and were not documented in the PWN or IEP consistent with requirements described under the Legal Standards in this letter;
16. The Superintendent simply stated in the Letter that the SEA found that the LEA was not required to provide written notice of every matter discussed by the IEP Team. However that was not what was in the Allegation; The Superintendent did not state whether the LEA violated a requirement of the IDEA or the Regulations as alleged in the Allegation;
17. On Page 26 of the Letter, the Superintendent partially quoted a content from the Federal Register, but acknowledged that PWN contents must be provided in writing.

18. The same page of the Federal Register states as follows:

*Comment: One commenter asked that the public agency be required to provide a description of all the proposals made by anyone on the IEP Team and the reasons why one proposal was chosen over another.*

*Discussion: Section 300.503(b)(1) and (b)(2) require the prior written notice to include a description of the action proposed or refused by the agency and an explanation of why the agency proposes or refuses to take the action. We do not believe that the change suggested by the commenter is needed because §300.503(b)(6) and (b)(7) already require that the prior written notice include a description of the other options that the IEP Team considered, the reasons why those options were rejected, and a description of other factors that are relevant to the agency's proposal or refusal.*

*Changes: None.*

(Federal Register, Vol. 71, No. 156, p. 46691, August 14, 2006)

However the Superintendent did not quote the above content in the Letter, which contradicts with the Superintendent's indication that every proposal and refusal made need not be addressed in the PWN. Instead of every proposals and refusal the Superintendent wrote in the Letter "every matter", which was not part of the Allegation. The Federal Register clarified above that the requirement to provide a description of all proposal made is already addressed under 34 C.F.R. §300.503. The Superintendent omitted reference to the above content of the Federal Register which supports the Allegation while she referred to other contents of the Federal Register on the same page, which demonstrates her inability to conduct an independent investigation; and

19. The Superintendent acknowledged in the Letter that she understood from Court documents that PWN must have sufficient detail to allow parents to participate in the educational decision-making process.

### **Allegation #1:**

The SEA did not review all relevant information and make an independent determination as to whether the LEA was violating a requirement of Part B of the IDEA or of the Regulations, with regards to the Allegation, in accordance with 34 C.F.R. §300.152.

*Date(s) violation(s) occurred or duration of the violation: September 10, 2020*



**Allegation #2:**

The State failed to monitor the implementation of PWN for the IEP Meeting by the LEA, in accordance with 34 C.F.R. §300.600.

*Date(s) violation(s) occurred or duration of the violation:* June 09, 2020

**Allegation #3:**

The State did not enforce the requirements under 34 C.F.R. §300.503 with regards to the PWN for the IEP Meeting, in accordance with 34 C.F.R. §300.600.

*Date(s) violation(s) occurred or duration of the violation:* September 10, 2020

**Allegation #4:**

The State did not ensure that the LEA met the program requirements under 34 C.F.R. §300.503 while investigating the Allegation, in accordance with 34 C.F.R. §300.600.

*Date(s) violation(s) occurred or duration of the violation:* September 10, 2020

**Allegation #5:**

The SEA did not ensure that the LEA established, maintained and implemented procedural safeguards that met the requirements of 34 C.F.R. §300.503 with regards to the PWN for the IEP Meeting, in accordance with 34 C.F.R. §300.500.

*Date(s) violation(s) occurred or duration of the violation:* June 09, 2020

**Allegation #6:**

The SEA did not ensure that it established, maintained and implemented procedural safeguards that met the requirements of 34 C.F.R. §300.500 and .503 with regards to the PWN for the IEP Meeting, in accordance with 34 C.F.R. §300.500.

*Date(s) violation(s) occurred or duration of the violation:* June 09, 2020

**Allegation #7:**

The State did not have procedural safeguards in effect to ensure that the LEA met the requirements of 34 C.F.R. §300.503 with regards to the PWN for the IEP Meeting, in accordance with 34 C.F.R. §300.121.

*Date(s) violation(s) occurred or duration of the violation:* June 09, 2020

**Allegation #8:**

The State did not have procedural safeguards in effect to ensure that the SEA met the requirements of 34 C.F.R. §300.500 and .503 with regards to the PWN for the IEP Meeting, in accordance with 34 C.F.R. §300.121.

*Date(s) violation(s) occurred or duration of the violation:* June 09, 2020

**Proposed Resolution:**

1. Within fifteen (15) days of the date of this letter, you should provide a written confirmation to the Complainant that qualified personnel have been temporarily appointed to the positions held by the Superintendent, the Branch Chief and the Section Chief;
2. Within twenty (20) days of the date of this letter, the SEA should provide a written confirmation to the Complainant that it has required the LEA to provide proper PWN for the IEP Meeting as required by the IDEA, the Regulations and COMAR within twenty five (25) days of the date of this letter;
3. Within twenty five (25) days of the date of this letter, the SEA and the State should ensure that the Student's parents were provided proper PWN for the IEP Meeting as required by the IDEA, the Regulations and COMAR;
4. Within thirty (30) days of the date of this letter, the SEA should provide a written confirmation to the Complainant that it has identified all prior State Complaint investigations it conducted within the past two (2) years from the date of this letter and reissued the letters describing the conclusions and corrective actions as required by the IDEA, the Regulations and COMAR, to the respective parties;
5. Within thirty (30) days of the date of this letter, the SEA should provide the Complainant with a copy of the revised procedure for monitoring activities under the Regulations, which include monitoring of the implementation of the PWNs;
6. Within forty five (45) days of the date of this letter, you should provide a written confirmation to the Complainant that appointment of qualified personnel to the

positions held by the Superintendent, the Branch Chief and the Section Chief is complete;

7. Within twenty five (25) days of the date of this letter, you should provide a written explanation to the Complainant with the steps the State has taken to ensure that the SEA conducts independent determination without retaliating the Student or the Complainant, during State Complaint investigations;
8. Within twenty five (25) days of the date of this letter, you should provide a written explanation to the Complainant describing the steps the State has taken to ensure that the SEA monitors the implementation PWNs consistent with 34 C.F.R. §300.321 by all school systems in the State;
9. Within twenty five (25) days of the date of this letter, you should provide a written explanation to the Complainant with the steps the State has taken to ensure that the SEA primarily focuses on improving educational results and functional outcomes of the student, and not on retaliating the student or the Complainant, during State Complaint investigations;
10. Within twenty five (25) days of the date of this letter, you should provide a written confirmation to the Complainant that minimum qualifications for the positions held by the Superintendent, the Branch Chief and the Section Chief has been revised to include ability and willingness to conduct independent investigations regardless of whether the complainants have filed complaints against them or the SEA alleging disability discrimination and/or violations of the IDEA and/or the Regulations and/or the related COMAR;
11. Within twenty five (25) days of the date of this letter, you should provide a written confirmation to the Complainant that minimum qualifications for the positions held by the Superintendent, the Branch Chief and the Section Chief has been revised to include ability and willingness to conduct independent investigations without covering up contents of Federal Register that supports the allegations;
12. Within thirty (30) days of the date of this letter, the SEA should provide a written explanation to the Complainant, describing the steps it has taken to ensure that the SEA and the State comply with each of the requirements in the Regulations which are described in this letter; and
13. Within thirty (30) days of the date of this letter, you should provide a written explanation to the Complainant, describing the steps the State has taken to ensure that each of the violations and the issues identified in this letter do not reoccur for the Student and any other children with disabilities in the State.

All of the above must be implemented. The SEA and the State must comply with all requirements in the IDEA, its implementing regulations, and COMAR for each of the steps described above.

**Complainant Information:**

*Complainant's Name:* HAMEED JAMARUSSADIQ

*Relationship to Student:* FATHER

*Address:* [REDACTED]

*Telephone Number(s):* [REDACTED]

This complaint is filed against the SEA and the State. Pursuant to 34 C.F.R. §300.33 and section 612(a)(11) of the Act, the term public agency includes the SEA. The SEA must, therefore, resolve any complaint against the SEA pursuant to the SEA's adopted State complaint procedures. The SEA, however, may either appoint its own personnel to resolve the complaint, or may make arrangements with an outside party to resolve the complaint. If it chooses to use an outside party, however, the SEA remains responsible for complying with all procedural and remediation steps required in part 300. (Analysis of Comments and Changes to IDEA, *Federal Register*, Vol. 71, No. 156, p. 46602, August 14, 2006).

Since the SEA has demonstrated severe deficiencies in its State Complaint procedures, because of the severity and depth of the deficiencies in the SEA's complaint investigation system, because of the unavailability of the qualified staff at the SEA and because of the fraudulent, abusive and retaliatory practices at the SEA, I strongly suggest that an outside party be used to investigate this complaint in order to have an independent, fair and proper investigation.

Failures of the SEA and the State described in this letter negatively impacts the education of children with disabilities in the State. I believe that it is essential that the SEA and the State fully comply with the requirements of the Regulations in order to provide Free Appropriate Public Education (FAPE) to the children with disabilities in the State.

By this letter to you and the copies, I would like to remind the SEA and the State that federal regulations prohibit public entities and recipients of Federal Financial Assistance (FFA) from taking actions, towards the Student or any of his immediate family members, to harass, intimidate, threaten, coerce or discriminate them, because I filed

this complaint, any additional complaints regarding the same or different matter, asserted the Student's right to receive FAPE in the State, or asserted the Student's right to not being discriminated based on his disability, in the State. I request you to take proactive measures to ensure that violations described in this paragraph do not occur.

I request you to ensure that this complaint is processed in accordance with the IDEA and the Regulations, complying with all procedural requirements. I also request you to provide procedures for effective implementation of corrective actions to achieve compliance as required by the IDEA.

Thank you for your cooperation. Please contact me to confirm the receipt of this complaint, set up times for the investigators to talk to me and establish timelines for completing the investigation. If you or the investigators need further information or clarification, I can be reached at the contact numbers in this letter.

Sincerely,

A black rectangular redaction box covering the signature of Hameed Jamarussadiq.

Hameed Jamarussadiq

c: Laurie VanderPloeg  
Gregg Corr  
Gbenimah Slopadoe  
Boyd K. Rutherford  
Karen B. Salmon  
Carol A. Williamson  
Marcella E. Franczkowski  
Trinell Bowman