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March 30, 2021

Via Electronic Mail

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Assistant Superintendent
Division of Early Intervention and Special Education Services
200 West Baltimore Street
Baltimore, Maryland 21201

Re: IDEA Complaint on Behalf of K.H., M.B., B.M., J.A.L., D.P., B.B., J.L.A., H.S., E.L., M.P., A.B., S.C., G.J.O.M., C.G., A.S., J.J.S., J.P., A.J., H.C. and all other similarly situated students in all local school systems and public agencies in Maryland¹

Dear Ms. Franczkowski:

Thank you for your letter of March 17, 2021 addressing the Education Advocacy Coalition's concern regarding whether the Maryland State Department of Education (MSDE) will look back to the date of pandemic-related school building closures when assessing the entitlement to compensatory education for students with disabilities. The response states that MSDE will not make any exceptions to the requirement that a complaint must be filed no later than one year from the date of the violation but that MSDE will look at documents pre-dating the one year violation date. This response does not allow families to sufficiently protect and preserve any claims they may have for compensatory education resulting from denial of a free appropriate public education (FAPE) that date back to the onset of the pandemic-related school building closures, particularly because many families did not receive continuity of learning plans, amended IEPs or any other documents from their children's IEP teams until well after school buildings closed on March 16, 2020. Therefore, in its official capacity as Maryland's federally-funded protection and advocacy (P&A) agency, Disability Rights Maryland (DRM) files this complaint on behalf of the above-named students and all other similarly-situated students in Maryland whose special education and related services have been impacted by the COVID-19 pandemic and related school building closures and who may be entitled to compensatory education as a result.²

¹ A list of the names of the students referenced in this complaint is being provided separately to the Maryland State Department of Education along with DRM releases and the attachments referenced in the complaint. Each local school system and public agency is receiving a list of the named students from its jurisdiction with the attachments referenced in the complaint.

² This complaint addresses compensatory services owed because students with disabilities did not receive FAPE; it does not address the recovery services students with disabilities may need, not because they regressed or did not receive FAPE, but simply because they did not make the progress they would have made had they been in school buildings for in-person implementation of their IEPs. Because no students in Maryland received education services for the first 10 school days of the school building closure, DRM files this complaint to protect the right of

DRM has identified both procedural and substantive concerns with the manner in which school systems across the state have approached special education during the pandemic-related school building closures. Significantly, most school systems do not dispute the effect of school building closures on the IEP process. Local school systems are aware and have acknowledged that building closures beginning in March, 2020 resulted in delays in child find, initial evaluations and reevaluations, identification of eligibility for special education, and the provision of specially designed instruction and related services to students in the eligibility process as well as students with individualized education programs (IEPs) already receiving special education and related services. Local school systems have observed regression and lack of expected progress on students' IEP goals and have expressed their intent to consider compensatory education/recovery services when school systems have returned to normal operations and they are able to observe and evaluate students in-person and determine on an individualized basis the impact school building closures and the pivot to distance learning have had on students.

This is consistent with guidance issued by the United States Department of Education (USDOE) on March 12, 2020 (“Questions and Answers on Providing Services to Children with Disabilities During the Coronavirus Disease 2019 Outbreak”) making clear that a school must make “an individualized determination whether and to what extent compensatory services may be needed” for a child who “does not receive services after an extended period of time” and by the USDOE’s Office for Civil Rights and Office of Special Education and Rehabilitative Services on March 21, 2020 in their “Supplemental Fact Sheet Addressing the Risk of COVID-19 in Preschool, Elementary and Secondary Schools While Serving Children with Disabilities.” (IEP teams “must make an individualized determination whether and to what extent compensatory services may be needed *when schools resume normal operations.*” (Emphasis added.)

MSDE’s own guidance reiterates this obligation. In Technical Assistance Bulletin #20-09, “Recovery Efforts: Addressing the Provision of FAPE through Alternative Service Delivery Models for Students with Disabilities during the Re-Opening of Schools,” issued on June 9, 2020 and revised in October, 2020, MSDE reiterates that the IDEA does not provide for a waiver of the provision of FAPE during the pandemic. MSDE explains that “compensatory education/recovery services” will be required in instances in which FAPE was not or could not be provided and the student was “negatively impacted.” The decision about whether a student is owed compensatory education/recovery services must be based on information and data, including data on the student’s progress prior to and during the school closure and data on “the student’s ability to recoup skills and make progress on IEP goals *upon the return to school.*” (Emphasis added.) The decision must also consider “documentation of accommodations and/or services provided” as well as the “accommodations and/or services the LSS/PA was unable to provide”, as well as the length of school closure, including the student’s ability to access distance learning opportunities. The compensatory education/recovery services “must be individualized to each student’s needs and designed to remediate the loss of skills.” *See* TAB at 6. Decisions regarding compensatory education/recovery services should be made “collaboratively with the

students with disabilities to seek compensatory education from March 30, 2020 through such time as they receive the free appropriate public education guaranteed to them by federal and state laws.

parent” and “should be made as soon as reasonably possible based on the availability of data.” See TAB at 8.

Based on our discussions with school system leadership across the state and on our participation in numerous IEP meetings, it is our understanding that local school systems plan to make determinations about compensatory education at some point in the future. We do not disagree that school systems might be able to better determine the effect of the school building closures and distance learning at a future date. However, the Maryland regulations implementing the IDEA require that a state complaint allege a violation that occurred no more than one year prior to the date the complaint is filed. COMAR 13A.05.01.15(A)(4). Because many of the IDEA violations for students with disabilities began on or about March 30, 2020, and because your message of March 17th makes clear that MSDE will consider documents predating the date of the complaint but will not toll the one year timeline to look back to March 30, 2020 regardless of when a complaint is filed, DRM files this complaint to preserve the right of all students with disabilities throughout Maryland to seek compensatory education for violations that occurred during school building closures that began in March, 2020; many of these students continue to accrue an entitlement to compensatory education because they are still not receiving FAPE.³

We ask MSDE to investigate the individual and systemic impact of school closures on students throughout the state, to identify the date on which violations began to accrue, and to find 1) that an individualized determination regarding eligibility for compensatory education must be made *when IEP teams have gathered the information and data necessary for making such determination*, and 2) that in making this determination, IEP teams must look back, if warranted by the facts of the student’s situation, to March 30, 2020, one year back from the date of this complaint, for all students in the following categories in each of Maryland’s local school systems and public agencies, including students in juvenile services facilities and students at the Maryland School for the Blind and Maryland School for the Deaf:

- 1) Students who had been referred for special education whose referral, assessments, subsequent identification, IEP development and/or placement were delayed by school building closures;
- 2) Students who were not able to access the general education curriculum during distance learning and who were not referred to special education or whose referrals were delayed by school building closures;
- 3) Students who were not evaluated or reevaluated or whose evaluations or reevaluations were delayed as a result of school building closures;
- 4) Students whose IEPs were not implemented or whose IEPs were not implemented fully during school building closures, including but not limited to, students who could not

³ It must be noted that timelines have been waived in other contexts for a variety of reasons. For example, state and federal courts have issued orders finding good cause to uniformly extend the time for a criminal trial to be held, thereby waiving the right of criminal defendants to a speedy trial. State and federal courts have issued orders suspending scheduling orders and time requirements established by the rules of procedure. Notably, state and federal courts have also issued orders extending the statute of limitations for filing complaints while courts are closed. Additionally, the Governor has issued executive orders suspending licensing and other executive requirements such as vehicle registration and emission test requirements and drivers’ license renewal deadlines.

access or benefit from distance learning, students whose services were decreased, students who failed to make progress, and students who regressed during school building closures.

The following students are representative examples of students throughout the state who may be eligible for compensatory education for the period of March 30, 2020 on.

Anne Arundel County: K.H., M.B., and all other similarly situated students

K.H. is a 7 year old student with autism, anxiety and attention deficit hyperactivity disorder. When school buildings closed, he was able to tolerate about an hour a week of distance learning with his teacher; his hyperactivity and anxiety prevented him from participating in more than that. Although the obligation to provide FAPE was not waived, AACPS did not explore alternatives to distance learning for K.H., and the school system did not hold his mother accountable for his lack of attendance. Knowing that the lapse in even this minimal service from the end of the 2019-20 school year to the beginning of the 2020-21 school year would be problematic, K.H.'s mother expressed her concerns to K.H.'s teacher, who told her not to worry. Because of his disabilities, K.H. was unable to participate in distance learning when the 2020-21 school year began, despite his mother's efforts to facilitate his access and participation. After K.H.'s mother reached what she thought was an understanding with the school system to gradually increase K.H.'s time with live instruction, school staff began to demand that K.H. participate more, despite the fact that his disabilities made him unable to tolerate distance learning. Instead of working with K.H.'s mother, AACPS referred her for truancy, then offered her the Alternate Attendance Program, which does not include any special education and requires the student to complete all of the graded assignments for the week while omitting synchronous instruction, or home schooling, which removes students from the school system entirely. At no time did AACPS offer FAPE to K.H.

At an IEP meeting on January 4, 2021, the IEP team discussed K.H.'s lack of participation in distance learning, noting that he was online for about 30 minutes a day, often without his camera on. His mother noted that he was very anxious and that distance learning had been a struggle from the beginning; she explained that going from class to a breakout room was stressful for K.H. and that he was very anxious. She also told the IEP team that K.H. does not do well with transition. The IEP team added additional supplementary aids and supports to the IEP and agreed to start sessions for K.H. and his teacher for 30 minutes a day. (Attachment 1: IEP Team Meeting Report and Prior Written Notice dated January 4, 2021.) The IEP team met again on January 25, 2021. K.H. had not logged in to distance learning since the January 4th IEP meeting. His mother discussed his anxiety, and the IEP team noted that and said they would send the strategies they had planned to implement to her so she could implement them. The team determined that K.H.'s teacher would set a time to meet with K.H. and his mother to try to reestablish a relationship. The IEP team refused "for public health reasons" to provide in-home one-to-one support services and noted that "AACPS staff is not going into homes based on public health concerns." The team also noted that private contractors were subject to the same limitation and further presumed to conclude that because K.H. was not going to return to school

that it would not be safe for him to have a support person in his home. (Attachment 2: IEP Team Meeting Report and Prior Written Notice dated January 25, 2021.)

K.H., his mother and his teacher had two meetings between January 25, 2021 and February 22, 2021 when the IEP team met again. It had taken substantial effort to get even that participation; K.H.'s mother told the team she essentially has to "bribe" K.H. to come to the computer and must provide a great deal of redirection. (Attachment 3: IEP Team Meeting Report and Prior Written Notice dated February 22, 2021.) When the IEP team met on March 22, 2021, K.H. had participated in two more sessions with his teacher; one of the sessions had to be rescheduled because K.H. was unable to engage that day. According to his mother, K.H. usually participates for 15 to 20 minutes of the hour session and sometimes he refuses to participate at all. AACPS has acknowledged several times, most recently at the March 22, 2021 IEP meeting, that K.H. did not access his education and is owed compensatory education, and that this will be discussed in the future. K.H. is included in this complaint to preserve his entitlement and the entitlement of all other Anne Arundel County students with disabilities to compensatory education for all periods of time when FAPE was not provided from March 30, 2020 until such time as their IEPs are fully implemented.

M.B. is a five year old child with an intellectual disability, attention deficit disorder, and a respiratory disorder currently attending kindergarten at Waugh Chapel Elementary School. Despite ample information from her mother that Maddie was unable to participate effectively in, or benefit from, distance learning, and despite its own documentation that Maddie was making insufficient progress on her IEP goals and objectives, AACPS refused to consider in-person services for Maddie. Maddie received virtually no education from school staff because of her inability to participate for more than a few minutes at a time, if at all, in distance learning or in asynchronous work, and she currently attends school on a hybrid schedule that still relies heavily on distance learning for the days when school is not in session. M.B.'s mother reached out to school personnel in July, 2020 and followed up in August, 2020 regarding plans for the fall, making clear that virtual learning had been detrimental to M.B.'s education, requesting one-to-one support and requesting an IEP meeting. The principal responded that "in person or at home support is not provided by the county at this time" and saying that a meeting would be scheduled when the IEP team was back to work. (Attachment 4: Email correspondence between Ms. B. and principal dated August 25, 2020.) M.B.'s mother continued to express concern about virtual learning and described having to hold M.B. down while she was "screaming and biting her arm" because distance learning was so aversive for her. (Attachment 5: Email correspondence between teacher and Ms. B. dated September 16-17, 2020). For the months of August and September, 2020, despite the efforts of M.B.'s mother to get support from the school, no IEP meeting was scheduled and no accommodations were put in place to support M.B. during virtual learning or to ensure that she received a free appropriate public education.

The IEP Team convened on September 29, 2020. During this meeting, M.B.'s mother expressed that virtual learning was not working for M.B. and again requested in-person services. The principal offered only AACPS' Alternate Attendance Plan, which does not include any special education and requires the student to complete all of the graded assignments for the week while

omitting virtual instruction, or 2) homeschooling. (Attachment 6: Prior Written Notice, date missing.) In October, 2020, a hybrid option became available that would have allowed M.B. to go to school in-person for two days a week. However, Ms. B. subsequently received an email message from AACPS regarding mandatory masks. She followed up with M.B.'s teacher because M.B. cannot wear a mask and was told: "There are no medical exemptions for mask wearing for any student or teacher. If a child cannot wear a mask for medical reasons, they are not a candidate for HYBRID." (Attachment 7: Email correspondence between Ms. B. and teacher dated October 19, 2020). As a result of this response from M.B.'s teacher, M.B. did not return to school in-person for the hybrid program.

On November 20, 2020, Ms. B. received a progress report for M.B. showing her lack of progress and documenting that because of her inability to participate in virtual instruction, there was insufficient data on IEP goals and objectives. (Attachment 8: IEP Progress Report dated November 19, 2020.) The progress report erroneously stated that Ms. B. had rejected live services, and Ms. B. reiterated in an email message to M.B.'s teacher that she had been "fighting for live services since the day the schools closed." (Attachment 9: Email message from Ms. B. to teacher dated December 1, 2020).

An IEP meeting was held on December 18, 2020. Ms. B. again requested in-person support for M.B., pointing to the escalation in M.B.'s behavior when they try to engage in distance learning. Blaming M.B.'s lack of progress on her non-attendance and refusing to recognize that she was not attending because her disabilities precluded her from doing so, AACPS again denied in-person services, stating that AACPS was not providing in-person services to any students and that it would not contract with outside providers for in-person services. (Attachment 10: Prior Written Notice dated December 18, 2020). On March 1, 2021, M.B. returned to school in-person for two days a week. She remains without FAPE for the other three days of the week. She is included in this complaint to preserve her entitlement and the entitlement of all other Anne Arundel County students to compensatory education for all periods of time when FAPE was not provided from March 30, 2020 until such time as their IEPs are fully implemented.

Baltimore City: B.M. and all other similarly situated students

B.M. is a 5 year old student with multiple disabilities whose parent speaks Spanish. She attends the Baer School, a separate public special education school. Although Baltimore City Public Schools (BCPSS) has responded quickly to digital access and other issues when issues have arisen, B.M. has missed a significant amount of special education instruction and related services. She was unable to access distance learning until she received a Chromebook on April 23, 2020; however, the device was configured in English and the parent manual was also in English. Once that issue was resolved, B.M. was able to participate in distance learning only with the full-time support of her mother, as the severity of B.M.'s disabilities prevents her from accessing or participating in distance learning without one-to-one in-person support and physical assistance. When B.M.'s mother has been unable to provide this support, B.M. has been unable to access her education. B.M.'s mother requested in-person related services, as she believed that B.M. did not benefit as effectively from virtual occupational and physical therapy and it was difficult for her to hold B.M. and the Chromebook at the same time. At an IEP team meeting on

September 10, 2020, the IEP team acknowledged that it was difficult for B.M.'s mother to position B.M. so she could see and be seen over the screen. Team members indicated that in-person related services were not possible and noted that they had developed creative options such as YouTube videos to demonstrate physical therapy positions to B.M.'s mother. However, without access to her stander or adapted chair, B.M. could not work on all of her physical therapy goals.

B.M. did not access distance learning consistently in September, 2020. When her mother logged in on September 17, 2020, there was no interpretation available and she became discouraged and did not log in for a week or so after that. B.M. then missed additional distance learning because wifi was disconnected in her home. BCPSS responded quickly and provided a mobile hotspot and a new Chromebook, but B.M.'s mother needed technical support to set up the hotspot, so B.M. lost additional instructional days. B.M.'s mother was able to log in on October 7, 2020, about a month after school had begun.

When BCPS reopened the Baer School for in-person services in November, 2020, B.M. was not able to attend regularly because of inconsistent transportation and nursing services. She returned to school on January 11, 2021 after winter break but her g/j tube became dislodged while she was at school and her mother had to take her to the emergency room for surgical re-placement of the tube. B.M. has been unable to attend distance learning since December because her mother is no longer able to support her learning due to her work schedule. B.M.'s mother wants B.M. to return to school in-person if a nurse who is well-versed in B.M.'s care needs is with her as required by her IEP. BCPS has not yet discussed compensatory education for B.M. She is included in this complaint to preserve her entitlement and the entitlement of all other Baltimore City students to compensatory education for all periods of time when FAPE was not provided from March 30, 2020 until such time as their IEPs are fully implemented.

Baltimore County: J.A.L., D.P., B.B., J.L.A., and all other similarly situated students

J.A.L. is a 12 year old student with autism currently attending the Sheppard Pratt School in Hunt Valley. From the time school buildings closed in March, 2020 until he began to receive in-person support for distance learning in February, 2021, he received no special education or related services. J.A.L.'s IEP team promptly developed a distance learning plan for him that included his IEP goals and objectives and his related services. However, J.A.L. is not able to independently access distance learning. His mother, a paramedic, is unable to support J.A.L. for distance learning because she works 12 hour shifts and when at home, manages her household and cares for J.A.L.'s two younger siblings in addition to J.A.L. The care provider in the home while J.A.L.'s mother is at work does not speak English, is not technology-literate, and is unable to support J.A.L. for distance learning. The IEP team met in September, 2020 and, despite having all of this knowledge, refused to recommend in-person services. Ultimately, J.A.L.'s mother reached an agreement with Baltimore County Public Schools in October, 2020 for the provision of in-person support for J.A.L., but this support did not begin until February, 2020. J.A.L. currently attends school in-person two days a week and receives in-person support for distance learning three days a week. According to his mother, he has regressed over the past year, particularly with respect to his behavior. Significantly, school personnel recently reached

out to his mother seeking to add seclusion to his IEP, a request with which she strongly disagrees. J.A.L.'s mother specifically reserved her right to request compensatory education. Baltimore County Public Schools has not yet convened IEP meetings to discuss compensatory education and has stated it will convene meetings in the future. J.A.L. is included in this complaint to preserve his entitlement and the entitlement of all other Baltimore County students with disabilities to compensatory education for all periods of time when FAPE was not provided from March 30, 2020 until such time as their IEPs are fully implemented.

D.P. is a 20 year old student attending Ridge Ruxton, a separate public special education school. He has multiple disabilities, including a traumatic brain injury, seizures, and an intellectual disability. His parents did not receive his amended IEP/continuity of learning plan until April 14, 2020, a month after school buildings closed, and when they received the plan, it called for a decrease of speech and language services to two times monthly consultation only instead of the three times weekly that was on his IEP. (Attachment 11: Amended IEP/Continuity of Learning Plan dated April 14, 2020.) Other families contacted DRM regarding the decrease from direct speech and language services to consultative services two times monthly consultation. Services were later restored but students missed sessions of direct therapy as a result of this arbitrary, unilateral decrease in services.

D.P. has participated in distance learning with one-to-one support from his mother. His June 19, 2020 progress report, which combined the third and fourth quarters, noted several times that D.P. "participated in 50% of google classroom lessons" and that during the lessons, his attention was not focused on the screen. The progress report further notes that D.P.'s vocational/community/transition goal was not addressed "because the nature of the goal is such that it could not be meaningfully addressed in the virtual format..." This was true for D.P.'s adapted physical education goal as well. (Attachment 12: IEP Progress Report dated June 19, 2020.) D.P.'s February 5, 2021 progress report indicated that none of D.P.'s goals were achieved and that he was not making progress in adaptive physical education because of his lack of attendance. (Attachment 13: Annual Review Progress Note dated February 5, 2021.) D.P. is unable to access or participate in distance learning without direct one-to-one support and facilitation. D.P. is included in this complaint to preserve his entitlement and the entitlement of all other Baltimore County students with disabilities to compensatory services for all periods of time when FAPE was not provided from March 30, 2020 until such time as their IEPs are fully implemented.

B.B. is an 11 year old student with multiple disabilities including intellectual disability, autism, and an orthopedic impairment who attends Battle Monument School, a separate special education school. As a result of these disabilities, B.B. can exhibit aggressive and challenging behavior. The behavior intervention plan developed by his IEP team was fairly effective while B.B. was in school during the 2019-20 school year; however, when school buildings closed because of the pandemic, B.B. struggled with the transition to distance learning. His continuity of learning plan did not include all of his IEP goals and objectives and his participation in distance learning was limited and sporadic during the spring and during extended school year services in 2020. The IEP team met on August 10, 2020 at the request of his mother, who

reported that virtual learning was not working well for B.B. and that his behavior had deteriorated. (Attachment 14: IEP Team Summary dated August 10, 2020.) The team agreed to look at data, then reconvene to make a recommendation as to what would constitute FAPE for B.B. with respect to distance learning. The IEP team reconvened on August 20, 2020 and determined that B.B. could receive FAPE through distance learning. The team noted that B.B. “needs an adult to access virtual instructional sessions (log on, ensure camera and microphone are on, navigate computer ‘issues.’)” The team recommended that the adult then move away and leave B.B. at the computer. (Attachment 15: IEP Team Summary dated August 20, 2020.) However, school staff repeatedly would ask B.B.’s mother to come in to the room to assist B.B., at which point he would become aggressive.

When the school year began, although B.B.’s mother worked hard to recreate school in her home, even obtaining posters and other supplies from Battle Monument so B.B. would have familiar items, distance learning remained challenging. At B.B.’s September 23, 2020 annual review, B.B. was willingly participating in some of his virtual classes but was only getting about an hour a day of instruction four days a week. His mother noted regression in his behavior over the period of time school buildings had been closed. (Attachment 16: IEP Team Summary dated September 23, 2020.) At an IEP meeting on October 14, 2020, B.B.’s mother presented data showing the significant number of times B.B. refused to attend distance learning sessions, interrupted sessions with behavior, and exhibited severe behaviors between September 8, 2020 when school began and October 12, 2020. Despite his mother’s efforts, B.B. often refused to participate, closing the computer or becoming aggressive to the point of injuring his mother and the Community First Choice support person working with him. The team again agreed that B.B. needed support at home but said it was not the IEP’s responsibility to identify the person. (Attachment 17: IEP Team Summary dated October 14, 2020.) The IEP team had recommended projecting instructions on a large computer monitor to engage him, but in practice, B.B. simply left the room or pulled the plugs out of the computer to end the sessions. B.B.’s mother eventually reached an agreement with BCPS in December, 2020 calling for BCPS to provide in-home trained behavior support for B.B. for 4.5 hours per day to enable him to access and participate in distance learning. The support aide began on January 11, 2021 and resigned after about 10 days. The second aide had a delayed start because of a positive COVID-19 test. At an IEP meeting on February 11, 2021, the IEP team agreed that B.B. should have the aide with him when he returns to school. At an IEP meeting on March 1, 2021, the IEP team noted that B.B. had only had support for 11 days and recommended that he continue to receive the in-home assistant for an additional 45 days so data could be collected regarding the effectiveness of the service. (Attachment 18: IEP Team Summary, dated March 1, 2021.) B.B. is included in this complaint to preserve his entitlement and the entitlement of all other Baltimore County students with disabilities to compensatory services for all periods of time when FAPE was not provided from March 30, 2020 until such time as their IEPs are fully implemented.

J.L.A. is a six year old Baltimore County student with autism. Prior to COVID-19 school building closures, he received special education services in a self-contained communication and learning support program at Fort Garrison Elementary School, his neighborhood school. J.L.A. did not benefit from distance learning between March and June, 2020, even when his trained

behavior therapist tried to facilitate his participation in instruction while she worked with him in his home. Although he has made progress in his home-based therapy, he was resistant to online therapy during the period before his behavior therapist was able to resume in-home services. Because of the severity of his autism, he is unable to engage with school personnel and peers via the computer and has difficulty engaging with people even if they are in the same room with him. He was not able to remain in his seat to focus on the computer or the lessons, even for a 15 minute lesson. To make educational progress, he needs face-to-face services. At school, he has adult assistance to facilitate his participation in the education services provided to him.

At an August 25, 2020 IEP meeting to discuss J.L.A.'s needs for the upcoming school year, J.L.A.'s parent, through her counsel, proposed several options to support her request for face-to-face service delivery. The IEP chair explained that she had reached out to the central office about the possibility of face-to-face services. She later followed up to say such services would not be possible. As the prior written notice reflects: "The team reviewed the requests and at this time we are not able to meet any of the requests that were made [due] to the COVID pandemic [sic] and the policies and regulations that are in place within BCPS at this time." (Attachment 19: IEP Team Summary dated August 25, 2020.) Ultimately, in mid-November, 2020, J.A.L.'s mother and BCPS reached an agreement that BCPS would provide in-home instruction to J.L.A. After a delay, an aide was identified but it became clear at an IEP meeting on March 10, 2021 that the person assigned has not been providing instruction to J.L.A. but instead has been trying to force J.L.A. to participate in distance learning. J.L.A. is included in this complaint to preserve his entitlement and the entitlement of all other Baltimore County students with disabilities to compensatory services for all periods of time when FAPE was not provided from March 30, 2020 until such time as their IEPs are fully implemented.

Calvert County: H.S. and all other similarly situated students

H.S. is an eight year old student in third grade at Plum Point Elementary School. H.S. was recently found eligible for special education by his IEP team as a student with multiple disabilities, including other health impairment and specific learning disability. Although H.S. had struggled academically since kindergarten, the school system did not evaluate him for special education. In March, 2020, H.S.'s pediatrician diagnosed him with attention deficit hyperactivity disorder and in April, 2020, H.S.' school found him eligible for a Section 504 plan, but the plan was not effective. During pandemic-related school closures, H.S. became frustrated, anxious and angry because he could not navigate distance learning. However, school personnel did not refer H.S. for consideration of the need for an IEP. H.S. struggled with academics, often missing class time. His parents offered a great deal of support with assignments initially, which resulted in passing grades for the first quarter only. During independent distance learning, H.S. never unmuted his microphone or turned his camera on. He punched his computer and broke it. He reads on a kindergarten level and failed classes when his parents began to provide less support to him. Shortly after the 2020-21 school year began, H.S.'s parent had a virtual meeting with several of his teachers, who expressed serious concerns about his inability to participate in virtual instruction. School staff had recently conducted a Woodcock Johnson assessment which showed that H.S. was significantly below grade level in all academic areas. However, it was

only after his parents obtained and presented a private neuropsychological evaluation that the school staff agreed to convene an IEP meeting. After reviewing the neuropsychological evaluation, which showed that H.S. continued to have severe attention deficit hyperactivity disorder in addition to executive function disorder and specific learning disabilities in reading, writing, and math, the IEP team agreed that H.S. was eligible for special education as a student with multiple disabilities. The school system's failure to consider the need for special education for H.S. given his complete inability to succeed with distance learning deprived him of an appropriate education for the spring of 2020 and a portion of the 2020-21 school year.

H.S. recently returned to in-person learning and is receiving a great deal of support from the special educator. He is happy and is gaining confidence from being back in school. H.S. is included in this complaint to preserve his entitlement and the entitlement of all Calvert County students with disabilities to compensatory education for all periods of time when FAPE was not provided from March 30, 2020 until such time as their IEPs are fully implemented.

Carroll County: E.L. and all other similarly situated students

E.L. is an 11 year old student diagnosed with multiple disabilities, including autism, intellectual disability, and other health impairment. E.V. requires hand-over-hand physical prompting and reinforcing rewards to learn a new task or skill. Due to the nature of E.V.'s disabilities, he struggled with the transition to virtual learning when school buildings closed in March, 2020. Prior to the school building closures, computer time had been used to reward E.V., not to present instruction. Additionally, he was unable to see home as a learning environment or his parent as an instructor. E.V.'s parent noted that E.V. struggled immensely with live video calls and that her attempts to provide him with support in the home were unsuccessful. His Individualized Continuity of Learning Plan also noted that E.V.'s teachers had to present him with only previously mastered material to encourage him to attend for any portion of time, and that attempts to use recorded lessons at a time most convenient for E.V had similarly fallen short of meeting his needs. His mother shared with the team that as of September 2020, E.V had lost 11,475 minutes of specialized academic instruction, 780 minutes of adapted physical education, 320 minutes of occupational therapy, 2,040 minutes of speech therapy, and 14,365 minutes of general education instruction. As a result of the school system's inability to provide all of E.V.'s IEP services in the home, as well as E.V.'s inability to attend to the instruction the school was able to provide in the home, E.V.'s mother requested in September, 2020 that the school system provide E.V. with face-to-face instruction and services. Ultimately, in December, 2020, E.V.'s parent and the local school system reached an agreement to return E.V. to in-person school as a school other than his had reopened but the school was able to accommodate E.V. E.V. retained the right to discuss compensatory education/recovery services at a later time but the school system has not yet convened a meeting to discuss this issue.

Cecil County: M.P. and all other similarly situated students

M.P. is a 14 year old student currently enrolled in ninth grade at Bohemia High School. He is diagnosed with dyslexia and dysgraphia and identified for special education services as a student with a specific learning disability. Prior to the pandemic-related school building closures, he attended eighth grade at Bohemia Manor Middle School and had the support of an adult aide in

the classroom, as well as weekly phonics instruction outside of the general education setting. He also received additional special education intervention for writing. At the start of virtual learning, Bohemia Manor Middle School offered only nine minutes of “specially designed instruction (SDI)” and a very small amount of speech services and did not fully implement M.P.’s IEP. When M.P.’s mother expressed concern that Bohemia Manor Middle was not implementing the speech portion of M.P.’s IEP, the school staff increased their offer to 12 minutes of speech but still did not implement the IEP. M.P.’s mother also raised concern about the lack of implementation of the academic special education services required by M.P.’s IEP. Bohemia Manor Middle staff changed M.P.’s specially designed instruction to 18 minutes per week, a fraction of what his IEP required. M.P.’s IEP was not implemented while distance learning continued through the remainder of the 2019-20 school year. M.P.’s mother documented her concern via email. Bohemia Manor Middle School staff told M.P.’s mother that they were instructed by the superintendent to only give 30% of IEP services to everyone during virtual learning.

During the 2020-2021 school year, M.P. transitioned to 9th grade at Bohemia Manor High School and his IEP services were changed. His IEP included a reading intervention class and special education services, but they were scheduled at the same time as his academic classes, and with 6th grade students, rather than students his age. He had to miss academic classes to go to his special education class. M.P. began to refuse to attend the special education service because it was untenable for him to keep up with two classes scheduled at the same time. M.P. was so frustrated that he stopped attending school for about three weeks in December, 2020. M.P. is currently not engaged in his education and continues to experience frustration during virtual learning because his IEP is not being implemented. M.P. is included in this complaint to preserve his entitlement and the entitlement of all other Cecil County students to compensatory education for all periods of time when FAPE was not provided from March 30, 2020 until such time as their IEPs are fully implemented.

Harford County: A.B. and all other similarly situated students

A.B. is a 13 year old student with autism assigned to Magnolia Middle School. He has had increasing difficulty controlling his behavior over the past few years. This has resulted in multiple psychiatric hospitalizations. During the 2019-2020 school year, A.B. attended Patterson Mill Middle School. In April, 2020, the school team met and decided that A.B. needed a more restrictive environment. A referral was made to the Central IEP team, which met in June, 2020. The Central IEP team recommended that A.B. be assigned to the Magnolia CSP program. The CSP program is a full-day special education program in a regular public county middle school. The program supports include a social worker to provide counseling. When the school year began in August, 2020, all instruction was being provided virtually due to the pandemic. According to his parent, virtual instruction had already proven to be ineffective for A.B. when school buildings closed for pandemic-related reasons in March, 2020. The Central IEP team recommended several assessments including occupational therapy, speech language therapy, and a functional behavior assessment. Because of the school building closures, none of those assessments was completed. Although the school system has offered some in-person instruction

during the 2020-2021 school year, it has been inconsistent because of additional closures and school breaks, and A.B. has made no progress academically or emotionally, according to his mother. In fact, A.B. was hospitalized several times during the 2020-2021 school year. On March 1, 2021, an IEP meeting was held at which time A.B.'s mother requested that the team consider a residential placement for A.B. According to the A.B.'s mother, the IEP team members stated that because they had little-to-no data regarding A.B.'s progress during the 2020-2021 school year, they could not determine whether or not he needed a residential placement. The team requested that A.B. attend school in-person for two weeks during which time staff would collect data and then provide his mother with a recommendation. Although more than four weeks have passed since that IEP meeting, A.B.'s mother has received no information from the school regarding his progress, and school staff have not indicated whether they have collected any data. A.B. has not received appropriate special education services for any period of time during the pandemic. He is included in this complaint to preserve his entitlement and the entitlement of all other Harford County students with disabilities to compensatory education for all periods of time when FAPE was not provided from March 30, 2020 until such time as their IEPs are fully implemented.

Howard County: S.C. and all other similarly situated students

S.C. is a nine year old student with autism who was unable to benefit from distance learning without in-person support. Based on her lack of success with distance learning in the spring, her mother requested an IEP meeting that was held on July 28, 2020 to discuss plans for the upcoming school year and compensatory services. The IEP team stated that "when the students are able to return to the 'brick and mortar' buildings, staff will be meeting to discuss data and to see if a child would require compensatory services because they have not maintained their IEP progress. The team meeting notes also reflect that the school psychologist "discussed that it is difficult at this time for the IEP team to discuss making a concrete plan to support [S.C.] because we just don't have the information in regards to how instruction will be provided." She further "discussed that engaging in the virtual instruction was very challenging for [S.C.] and that she will require additional support for the upcoming school year in order to access virtual learning." (Attachment 20: IEP Team Meeting Report dated July 28, 2020.) At a subsequent IEP meeting on September 2, 2020, S.C.'s mother made a specific request for in-person services for S.C. IEP team members discussed the difficulties S.C. had faced with distance learning. The special education instructional facilitator stated, contrary to federal and state guidance that FAPE requirements had not been waived, that instruction in the spring of 2020 was "not new learning, but instead instruction to maintain skills." The IEP team did determine at the September 2nd meeting that S.C. required in-person support to access distance learning and recommended 24 hours a week of in-person support. (Attachment 21: IEP Team Meeting Report dated September 2, 2020.)

On September 21, 2020, the instructional facilitator wrote to S.C.'s mother saying that "we remain unable to provide in-home support to [S.C.] as agreed to at the recent IEP meeting." Attachment 22: Email message from Instructional Facilitator to Ms. C. dated September 21, 2020.) On November 18, 2020, the instructional facilitator sent an email message to S.C.'s

mother saying that Howard County Public Schools was “moving forward with completing the process for securing in home supports using an agency with whom we already do business.” (Attachment 23: Email message from Instructional Facilitator to Ms. C. dated September 21, 2020.) On December 13, 2020, the Instructional Facilitator sent another email message to Ms. C. saying, “It is my understanding that we will be able to start assigning in-home aides this week.” (Attachment 24: Email message from Instructional Facilitator to Ms. C. dated December 13, 2020.) Unfortunately, to date, HCPSS has not provided S.C. with in-person support. S.C. currently attends school in-person four days a week but continues without in-person support on the day when she is not in school. S.C. is included in this complaint to preserve her entitlement and the entitlement of all other Howard County students with disabilities to compensatory education for all periods of time when FAPE was not provided from March 30, 2020 until such time as their IEPs are fully implemented.

G.J.O.M. is an eight year old child with autism currently attending Cedar Lane School, a separate special education school. He was placed at Cedar Lane for diagnostic purposes just days before school buildings closed in March, 2020 because of the pandemic. G.J.O.M. did not transition successfully to distance learning; he was unable to participate meaningfully. At an IEP meeting on September 30, 2020, his mother explained that G.J.O.M. was not learning anything from online instruction and she was concerned about his education. His teacher noted that he was using less English; G.J.O.M.’s family speaks Spanish at home. (Attachment 25: IEP Team Meeting Report dated September 30, 2020.) At an IEP meeting on December 23, 2020, the IEP team agreed that J.O.M. would benefit from in-person support. The Resource teacher explained that the County has a process for requesting in-home support, “which was approved last night...” The team recommended that G.J.O.M. receive 21 hours and 50 minutes of in-home adult support per week to access distance learning. (Attachment 26: IEP Team Meeting Report dated December 23, 2020.) G.J.O.M. never received the in-home support. Given that, according to staff’s own statement, the process for requesting in-home support was not approved until December 22, 2020, roughly nine months after school buildings closed and distance learning began, it is clear that other students in need of in-person support, including S.C. as noted above, also went without needed supports that would have helped them access and participate in distance learning and without which, they were unable to obtain a FAPE. G.J.O.M. is included in this complaint to preserve his entitlement and the entitlement of all other Howard County students with disabilities to compensatory education for all periods of time when FAPE was not provided from March 30, 2020 until such time as their IEPs are fully implemented.

Montgomery County: C.G. and all other similarly situated students

C.G. is an eight year old student with autism who attends the Extension Program at Candlewood Elementary School. C.G. has significant needs and requires a high level of specialized one-to-one instruction from his classroom teacher, which he has received since he began his education with Montgomery County Public Schools (MCPS). C.G.’s IEP teams have noted in the past that he demonstrates regression in his skills during extended breaks from school and takes longer than would be expected to recoup those lost skills. Since the beginning of the school building closures in March, 2020 and the transition to distance learning, C.G.’s parents have repeatedly

noted their concerns about C.G.'s ability to access the curriculum. IEP team members were aware that C.G. was not accessing the curriculum and expressed their hope that the 2020-21 school year would be different and that C.G. would be able to participate in his education. On August 17, 2021, C.G.'s parents received an individualized distance learning plan (IDLDP) for C.G. that had been developed without their input; after requesting in-person services that were denied, they rejected the IDLP. At a subsequent IEP meeting, the family again requested in-person services and preserved C.G.'s right to compensatory education. MCPS denied these requests and advised C.G.'s parents and counsel that it would determine compensatory education when the student returned to school. (Attachment 27: Prior Written Notice dated September 10, 2020.) C.G. had no access to the curriculum from the day school buildings closed until he returned to in-person schooling on March 1, 2021; he still does not have full access to the modified curriculum being provided to him. During the period of time virtual instruction was provided, his mother had to sit with him each day to try to get him to access distance learning but he would become physically aggressive and be unable to participate. Additionally, he did not have access to a consistent communication system during this time. C.G. is included in this complaint to preserve his entitlement and the entitlement of all Montgomery County students with disabilities to compensatory education for all periods of time when FAPE was not provided from March 30, 2020 until such time as their IEPs are fully implemented.

Prince George's County: A.S., J.J.S. and J.P. and all other similarly situated students

A.S. is a 13 year old student with a specific learning disability, anxiety and attention deficit hyperactivity disorder attending Greenbelt Middle School. His parent does not speak English. A.S. has been unable to successfully access and participate in distance learning. A continuity of learning plan was completed by the school system in April 2020; however, A.S.'s parent stated that she never received it, and it was not translated into Spanish. The continuity of learning plan addressed only two of A.S.'s three IEP goals (omitting his Academic-Written Language Content Goal) and his special education services were decreased. (Attachment 28: Individualized Continuity of Learning Plan.)

Since the start of distance learning, A.S. has had persistent and chronic issues with technology, has not been able to log on to classes, and also did not understand his virtual schedule. There have also been significant language barriers for his mother in communicating with the school, which have impeded her ability to support A.S. to participate meaningfully in his education. For example, prior written notices, assessments, and other education records have not been translated into Spanish and provided to the parent as legally required, and the school was not using Language Links or any other translation service when communicating with A.S.'s mother by telephone. At an IEP meeting in October 2020, the IEP team acknowledged that due to technological and other issues, A.S. missed a great number of school days and that no data could be collected regarding A.S.'s progress towards his IEP goals. (Attachment 29: Prior Written Notice dated November 4, 2020 and Attachment 30: IEP dated October 27, 2020.) The IEP team further determined that "[A.S.] did not require a reevaluation" and updated the present levels of academic achievement and functional performance to state only "Due to [A.S.'s] technological issues, poor attendance and a lack of current data the team decided to use the most recent

assessment findings dated 11/25/19.” *Id.* A.S.’s parent also received truancy letters from the school system for absences related to days where he missed class because of technology issues. The school is currently conducting an audit of A.S.’s absences to correct the attendance record.

At an IEP meeting on March 11, 2021, when the parent again expressed her concerns over A.S.’s inability to access and meaningfully participate in virtual learning, the IEP team expressed its willingness to support A.S. and the parent and scheduled an in-person parent and student training on the virtual platform and navigating A.S.’s schedule, which was helpful. However, at this time, A.S. has missed a significant amount of instruction, is failing his classes, and is at risk of being retained. A.S. is included in this complaint to preserve his entitlement and the entitlement of all other Prince George’s County Public Schools students to compensatory education for all periods of time when they were entitled to services and FAPE was not provided from March 30, 2020 until such time as their IEPs are fully implemented.

J.J.S. is a seven year old student with Down Syndrome and a hearing impairment at Templeton Elementary School whose parent does not speak English. J.J.S. did not have a device to access distance learning from the time school buildings closed in March, 2020 until October, 2020. Even with the device, J.J.S. has been unable to successfully participate in distance learning; typically, she participates in two 30 minute sessions weekly, during which her mother has to sit with her throughout the session. J.J.S.’s mother and her pediatrician asked the IEP team for in-person one-to-one support because J.J.S.’s mother is unable to provide the needed support, but the IEP team denied these requests. Additionally, between the time school buildings shut down and June, 2020, J.J.S. did not receive speech therapy or occupational therapy. A neuropsychological evaluation ordered by the IEP team in November, 2021 has still not been completed. J.J.S. is included in this complaint to preserve her entitlement and the entitlement of all Prince George’s County students with disabilities to compensatory education for all periods of time when FAPE was not provided from March 30, 2020 until such time as their IEPs are fully implemented.

J.P. is a nine year old student with attention deficit hyperactivity disorder, depression, and anxiety. She is a third grader at Longfields Elementary School. J.P.’s mother requested an evaluation of J.P. for an IEP on November 19, 2020. The IEP team met in December, 2020. J.P.’s mother wanted to consent to assessments at that time. She was initially told that assessments would not be done because of a backlog during the pandemic. After counsel became involved, the IEP team ordered assessments and J.P.’s mother consented. J.P.’s mother also obtained a private neuropsychological evaluation and provided it to the IEP team; the evaluation included a list of recommended services and accommodations needed by J.P. The IEP team reviewed and accepted the neuropsychological assessment at a meeting in March, 2021 but to date has not conducted the assessments ordered by the IEP team after its December meeting. Neither has the IEP team convened to discuss J.P.’s eligibility for special education, although it is clear that she will be eligible for special education, given that the IEP team adopted the neuropsychological evaluation at its meeting in March, 2021. She has, therefore, spent months without access to special education and related services because the IEP referral process has stalled. J.P. is included in this complaint to preserve her entitlement and the entitlement of all

Prince George's County students with disabilities to compensatory education for all periods of time when FAPE was not provided from March 30, 2020 until such time as their IEPs are fully implemented.

Washington County: A.J. and all other similarly situated students

A.J. is a 15 year old student currently identified under the disability of Other Health Impairment for Attention Deficit Hyperactivity Disorder (ADHD) who attends Laurel Hall, a nonpublic school. In addition to ADHD, he has diagnoses of Autism Spectrum Disorder and Oppositional Defiant Disorder. When school buildings closed in March 2020, he was not able to access distance learning and paper packets were sent home. His mother did not receive his amended IEP/continuity of learning plan until April 23, 2020 and he was not provided with an iPad until May 2020. (Attachment 31: Email message dated April 23, 2020 and meeting minutes dated May 4, 2020.) Once he was provided with an iPad, he was not able to sit down long enough to log onto the computer to access and participate in distance learning. He was able to work on minimal paper packets at home with his mother, and for the fourth quarter of the 2019-2020 school year, he only completed a total of three assignments. (Attachment 32: Meeting Minutes dated July 27, 2020.) A.J. started the 2020-21 school year in distance learning. During this time, he was reported as being absent 75 days and turned in two pages of school work. (Attachment 33: Meeting Minutes dated March 11, 2021.) Based on A.J.'s inability to access and participate in distance learning, his IEP team recommended that he transfer to Cedar Ridge School, a different nonpublic school that offered in-person learning four days a week. From October 22nd through November 18, 2020, he attended 15 out of 22 school days of in-person learning at Cedar Ridge; however, he had a very difficult time transitioning to the new school and the placement was not successful. A.J. was returned to Laurel Hall at the end of November, 2020, where he attended a few days of in-person school. However, this was short-lived because after Thanksgiving, Laurel Hall closed its school building again and returned to distance learning through February 16, 2021. A.J. was again unable to access or participate in distance learning. He was provided with some paper packets but completed only a minimal amount of work. Laurel Hall is now open 4 days per week for in-person learning. A.J. is having a difficult time transitioning back to in-person schooling. An IEP meeting was held on March 11, 2020 to discuss his lack of progress. A.J. is included in this complaint to preserve his entitlement and the entitlement of all other Washington County students with disabilities to compensatory education for all periods of time when FAPE was not provided from March 30, 2020 until such time as their IEPs are fully implemented.

Wicomico County Public Schools: H.C. and all other similarly situated students

H.C. is a 14 year old student diagnosed with anxiety, depression, bipolar disorder, oppositional defiant disorder and ADHD. Prior to the pandemic-related school building closures, an initial IEP meeting was held for H.C. on February 26, 2020. H.C.'s parent signed the consent for assessments on March 11, 2020. H.C. was expelled from the school system on March 6, 2020 and was told she would receive educational services from Choices. However, these educational services were never initiated. Once the school buildings closed, H.C.'s parent reached out to Choices and to Mardela Middle School (H.C.'s regular school placement) to request work for

H.C.; however, Mardela denied responsibility for providing work and Choices said it was not sure who was responsible for providing the work. When this issue was brought to the school system's attention, the school system began on April 16, 2020, a month after school buildings closed, to provide H.C. with nondigital learning packets, since her family did not have internet access.

The school system indicated that it was unable to provide assessments due to the Covid-19 school closures; thus, H.C.'s initial assessments were delayed significantly. (Attachment 34: Email message dated April 14, 2020.) The psychological assessment was finally conducted on September 18, 2020 and the educational assessments were conducted in October, 2020. The IEP meeting to review the assessments was held on December 1, 2020 and H.C. was found eligible for special education as a student with an emotional disability. An IEP development meeting was held on December 16, 2020. It took the school system nine months from the date H.C.'s mother consented to assessments to develop H.C.'s initial IEP. This delay deprived H.C. of special education and related services she would have had months earlier had the process proceeded in a timely manner.

At the beginning of the 2021-2021 school year, the school system provided H.C. with a hot spot to enable her to connect to distance learning. Unfortunately, however, H.C. was unable to participate meaningfully in distance learning due to pandemic-related increased social-emotional and mental health challenges. At an IEP meeting on December 16, 2020, H.C.'s teachers reported that "she misses class, is late, leaves early, or does not engage with her teacher and classmates during discussion" and shows frustration with school because she has fallen behind. (Attachment 35: Prior Written Notice dated December 16, 2020.) These challenges continued, and an IEP meeting was held on March 18, 2021 to discuss H.C.'s lack of progress. The team agreed that H.C. missed a lot of class time and classwork while participating in distance learning and added additional special education services to the IEP. H.C. recently returned to in-person learning four days per week; however, the completion of assignments on Wednesdays continues to be a problem. H.C. is included in this complaint to preserve her entitlement and the entitlement of all other Washington County students to compensatory education for all periods of time when they were entitled to services and FAPE was not provided from March 30, 2020 until such time as their IEPs are fully implemented.

Requested Relief:

DRM requests that MSDE investigate systemic failures to provide FAPE to students reaching back to the date of initial pandemic-related school building closures, to identify the date on which violations began to occur and, to the extent violations are found, order that the local school system notify parents and convene an IEP meeting for each affected student to assess that student's entitlement to compensatory education. Specifically, we are requesting that MSDE require all local school systems and public agencies to make individualized determinations based on information and data and that they consider denials of FAPE regarding identification for special education, assessment or reassessment, or the provision of special education instruction and/or related services at any point in time from March 30, 2020 on as a result of pandemic-related school building closures. DRM is not asking that these meetings be convened

immediately or within a specified number of days or weeks, as we recognize that most school systems have not returned to normal operations, that sufficient information and data are not yet available to make thoughtful, individualized determinations about compensatory education, and that a large number of students are potentially eligible for compensatory education in each local school system and public agency. We look forward to working with MSDE and with local school systems and public agencies as this process continues to unfold. Please feel free to contact us if you wish to discuss this matter.

Sincerely,

Aarti Sidhu, Staff Attorney

Megan Collins, Staff Attorney

Tacha Marshall, Paralegal

Megan Berger, Assistant Managing Attorney



Leslie Seid Margolis

Managing Attorney

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