



November 3, 2023



Ms. Allison Myers, Executive Director
Baltimore County Public Schools
Department of Special Education
Jefferson Building, 4th Floor
105 West Chesapeake Avenue
Towson, Maryland 21204

RE:
Reference: #24-031

Dear Parties:

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

ALLEGATIONS:

On September 5, 2023, MSDE received a complaint from Ms. hereafter, “the complainant”, on behalf of the above-referenced student. In that correspondence, the complainant alleged that the Baltimore County Public Schools (BCPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to the above-referenced student:

MSDE investigated the following allegations:

1. The BCPS did not ensure that proper procedures were followed when determining the student’s educational placement for the 2023-2024 school year, in accordance with 34 CFR §§300.114 - .116.
2. The BCPS has not ensured that the student has been consistently provided with the special education instruction, advance preparation for schedule changes, social skills training, personal schedule, and picture schedule as required by the Individualized Education Program (IEP) since the start of the 2023-2024 school year, in accordance with 34 CFR §§300.101 and .323.
3. The BCPS has not followed proper procedures when using physical restraint since the start of the 2023-2024 school year, in accordance with COMAR 13A.08.04.05.

BACKGROUND:

The student is five years old and is identified as a student with Autism under the IDEA. He attends School and has an IEP that requires the provision of special education instruction and related services.

ALLEGATIONS #1 AND #2:

**DETERMINING THE STUDENT'S EDUCATIONAL
PLACEMENT AND PROVISION OF SPECIAL EDUCATION
SUPPORTS AND SERVICES.**

FINDINGS OF FACTS:

1. On June 5, 2023, the IEP team met to review and revise, as appropriate, the student's IEP. During the meeting, the student's teacher shared that at times the student is "physical" due to his inability to communicate and a lack of social skills. The student's speech and language therapist shared the student struggles with transitions, and as a result speech and language services are delivered inside of the classroom because the student often refuses to leave the classroom. The complainant shared that she feels the student is better adjusted to arriving at school as he no longer exhibits behaviors such as crying. During his private outside services, he takes breaks on the trampoline to keep him engaged. The parent proposed, and the IEP team agreed that the student required additional adult support during the day to reduce safety and behavioral incidents.
2. The IEP team updated the student's present level of academic achievement and functional performance (PLAAFP) in the area of "Behavioral: Social/Emotional/Behavioral" based on current observations and data collected by the school staff. The BCPS team proposed supplementary aids and supports to help gain and sustain the student's attention. The IEP team determined that the following supplementary aids and services should be added to the student's IEP:
 - notification of schedule changes;
 - a personalized schedule;
 - positive reinforcements to help increase desired behaviors;
 - visual supports and cues to assist with comprehension; and
 - adult support to help decrease safety and behavior issues.

The IEP team further determined the student required a social/emotional/behavioral goal to address following directions, and a social foundations goal to address safety. Based upon the "nature and severity of his disability and communication needs, along with his interfering behaviors" the IEP team determined the student is eligible for Extended School Year (ESY).

3. The complainant shared that the student's previous daycare and school environment suggested that he should be supported in a small group environment. The BCPS team proposed adding thirty minutes per day of specialized instruction outside of the general education setting to address the student's "safety and social skills". The IEP team considered and rejected the general education setting without special education services and supports, special education services delivered inside the general education setting, and a combination of special education services delivered inside and outside the general education setting. The IEP team determined that the student requires a social skills group and speech and language services outside of the general education setting.
4. The student's June 5, 2023, IEP requires specialized instruction for one hour and fifteen minutes per week inside of the general education setting to address peer interaction, thirty minutes daily outside of the general education setting to address safety and social skills, and thirty minutes weekly of speech and language services outside of the general education setting. The student's IEP further requires the following supplementary aids and services:

- advance preparation for schedule changes;
- social skills training;
- personal schedule; and
- picture schedule.

5. There is documentation that the student has been consistently provided with the special education instruction, advance preparation for schedule changes, social skills training, personal schedule, and picture schedule as required by the IEP during the 2023-2024 school year.

CONCLUSIONS:

Allegation #1:

Educational Placement

Based upon Findings of Facts #1 to #4, MSDE finds that the BCPS did ensure that proper procedures were followed when determining the student's educational placement for the 2023-2024 school year, in accordance with 34 CFR §§300.114 -.116. Therefore, this office does not find that a violation occurred with respect to the allegation.

Allegation #2:

Provision of Services

Based on Findings of Facts #4 and #5, MSDE finds that the BCPS has ensured that the student has been consistently provided with the special education instruction, advance preparation for schedule changes, social skills training, personal schedule, and picture schedule as required by the Individualized Education Program (IEP) since the start of the 2023-2024 school year, in accordance with 34 CFR §§300.101 and .323. Therefore, this office does not find that a violation occurred with respect to the allegation.

ALLEGATION #3:

USE OF PHYSICAL RESTRAINT

FINDINGS OF FACTS:

6. On September 1, 2023, the student had an incident in the library. The documentation reports that the student was in the library with school staff. While in the library the student began to run around the bookshelves, school staff attempted to "prevent [the student] from running away or injuring himself". The school staff continued to try and stop the student from running and disturbing the class; however, he ran away. The school staff approached the student, reached forward to catch him as the student pulled away. The student continued to resist "settling down". The school staff was able to stop the student from running by "catching his shirt with my hand instead of his body". The school staff walked the student over to the tables. Shortly after, the student began grabbing his neck while sitting at the table. The school staff noticed the student was scratched, returned him to his classroom teacher and informed the teacher of the incident. The student was immediately seen by the school nurse. The school nurse applied a bandage to the scratches and telephoned the complainant regarding the incident and the student's injuries.
7. There is no documentation that a physical restraint was used on the student since the start of the 2023-2024 school year.

CONCLUSION:

Physical restraint" means the use of physical force, without the use of any device or material, that restricts the free movement of all or a portion of a student's body. (b) "Physical restraint" does not include: (i) Briefly

holding a student to calm or comfort the student; (ii) Holding a student's hand or arm to escort the student safely from one area to another; (iii) Moving a disruptive student who is unwilling to leave the area if other methods such as counseling have been unsuccessful; or (iv) intervening in a fight. (COMAR 13A.08.04.02)

The use of physical restraint is prohibited in public agencies and nonpublic schools unless there is an emergency situation and physical restraint is necessary to protect a student or another person from imminent, serious physical harm after other less intrusive, nonphysical interventions have failed, or been determined inappropriate. Physical restraint is also permitted if the student's BIP or IEP describes specific behaviors and circumstances in which physical restraint may be used (COMAR 13A.08.04.05A(1)(a)).

Based on Findings of Facts #6 and #7, MSDE finds that the student was not physically restrained during the behavioral incident on September 1, 2023, as there is no documentation that the staff member restricted the movement of the student's body when attempting to keep him in his assigned space, in accordance with COMAR 13A.08.04.05. Therefore, this office does not find that a violation occurred with respect to the allegation.

TIMELINES:

As of the date of this correspondence, this Letter of Findings is considered final. This office will not reconsider the conclusions reached in this Letter of Findings unless new, previously unavailable documentation is submitted and received by this office within fifteen (15) days of the date of this correspondence. The new documentation must support a written request for reconsideration, and the written request must include a compelling reason for why the documentation was not made available during the investigation. Pending this office's decision on a request for reconsideration, the public agency must implement any corrective actions within the timelines reported in this Letter of Findings.

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

Sincerely,

Dr. Deann M. Collins
Deputy Superintendent
Office of the Deputy Superintendent of Teaching and Learning

DMC/tg

c:	Myriam Yarbrough	Gerald Loiacono
	Jason Miller	Diane Eisenstadt
	Conya Bailey	Nicole Elliott
	Charlene Harris	Paige Bradford
	Alison Barmat	Tracy Givens