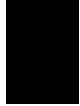




December 15, 2023



Ms. Kia Middleton- Murphy  
Acting Director of Special Education Services  
850 Hungerford Drive, Room 225  
Rockville, Maryland 20850

RE: [REDACTED]  
Reference: #24- 051

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 October 16, 2023, MSDE received a complaint from Ms. [REDACTED] hereafter, “the complainant,” on behalf of her son, the above-referenced student. In that correspondence, the complainant alleged that the Montgomery County Public Schools (MCPS) 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 MCPS has not ensured that the student was evaluated in all areas of suspected disability since October 2022, in accordance with 34 CFR §300.303 - .306 and COMAR 13A.05.01.06.
2. The MCPS has not developed an Individualized Education Program (IEP) and Behavior Intervention Plan (BIP) that addressed the student’s identified behavioral needs since October 2022, in accordance with 34 CFR §300.324.
3. The MCPS has not ensured that the student was provided with the social/emotional and behavioral supports required by his IEP since October 2022, in accordance with 34 CFR §300.323.
4. The MCPS did not follow proper procedures when using physical restraint and seclusion with the student on October 13, 2023, in accordance with COMAR 13A.08.04.05.

**BACKGROUND:**

The student is ten years old and is identified as a student with an emotional disability under the IDEA. He attends [REDACTED] School and has an IEP that requires the provision of special education instruction and related services.

**ALLEGATION #1 AND #2: EVALUATED STUDENT IN ALL AREAS OF SUSPECTED DISABILITY AND DEVELOPED AN IEP AND BIP THAT ADDRESSED THE STUDENT'S IDENTIFIED BEHAVIORAL NEEDS**

**FINDINGS OF FACTS:**

1. The student's IEPs developed on March 31, 2022, and April 17, 2023, reflect the student's identified disability as an emotional disability with the areas affected by his disability as written language content, behavioral self-management, behavioral social emotional, and behavioral social interaction skills.
2. The student's IEPs developed on March 31, 2022, and April 17, 2023, reflect the Present Level of Academic Achievement and Functional Performance for social emotional/behavioral as performing at grade level expectations for the majority of the school day. It further reflects that for social interaction skills the student is also performing at grade level expectations, and for self-management the student is performing slightly below age expectations.
3. The student's IEP developed on March 31, 2022, reflects that a Functional Behavior Assessment (FBA) was completed for the student on December 1, 2018. It reflects that the student requires a Behavior Intervention Plan (BIP) and that the IEP team decided that restraint was not required as part of the BIP.<sup>1</sup>
4. The student's IEP developed on March 31, 2022, requires the student to be provided with special considerations and accommodations for his behavioral needs: daily review of expectations prior to transitions and before entering the environments, daily provision of frequent changes in activities or opportunities for movement, daily use of strategies to initiate and sustain attention, weekly social skills training, daily provision of manipulatives and/or sensory activities to promote listening and focusing skills, daily encouragement/reinforcement of appropriate behavior in academic and non-academic settings, daily advanced preparation of schedule changes, periodic use of headphones or noise buffers, daily check-in/ check-out with preferred staff, daily provision of fail safe choices, as needed positive/concrete reinforcement, as needed encourage student to ask for help when needed, and weekly home-school communication. The student's IEP developed on April 17, 2023, requires the same special considerations and accommodations for his behavioral needs as his March 31, 2022, IEP, except that he no longer requires daily provision of frequent changes in activities or opportunities for movement.
5. The student's IEP developed on March 31, 2022, requires the student goals in the areas of:
  - a. Social Interaction Skills (goal one): Given adult support, visuals, social skill training, and modeling the student will positively interact with peers in a variety of settings (e.g. classroom, recess, lunch, specials).
  - b. Social Interaction Skills (goal two): Given specific instruction, on-topic conversation reminders, opportunities to practice, consistent reinforcement of expected skills, adult support, the student will communicate with peers and staff in a school expected manner, using school appropriate language and topics.

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<sup>1</sup> This is a clerical error on the IEP as the student has a BIP that was updated and implemented.

- c. Social Interaction Skills (goal three): Given evidence-based interventions, implementation of the behavior plan as necessary, visual supports, adult proximity and modeling, concrete reinforcement, immediate feedback, explicit instruction and opportunities for guided practice, the student will demonstrate perspective taking with peers and adults,  $\frac{3}{5}$  opportunities.
  - d. Social Emotional/Behavioral (goal one): Given adult support, visuals, and a coping strategies menu, the student will successfully identify and then implement coping strategies as needed throughout the school day.
  - e. Social Emotional/Behavioral (goal two): Given verbal and non-verbal prompting, visual cues, direct support in strategies, the student will interact safely with staff and students throughout the school environment.
  - f. Social Emotional/Behavioral (goal three): Given direct instruction in emotional regulation strategies, a menu of calming strategies, opportunities to practice in isolation with adults and peers, and fading adult support, the student will demonstrate appropriate behavior when angry with others in  $\frac{3}{5}$  opportunities.
  - g. Behavioral Self-Management (goal one): Given extended time, visuals, checklists, opportunities to practice, the student will initiate and complete work tasks within the classroom.
  - h. Behavioral Self-Management (goal two): Given consistent positive reinforcement and feedback, explicit instruction of social skills and flexible thinking, menu of coping strategies, a faded prompt hierarchy, and repeated practice of taught skills, the student will demonstrate flexibility during frustrating and anxiety producing, situations with no more than two prompts, in 3 out of 5 opportunities.
6. The student's IEP developed on March 31, 2022, requires the student to be provided weekly with twenty-eight hours and forty-five minutes of specialized instruction in the general education classroom provided by the general education teacher, instructional assistant, or the special education teacher. In addition, it requires the student to be provided weekly with two hours and fifty minutes of specialized instruction outside the general education classroom provided by the special education teacher, general education teacher, or instructional assistant. The IEP further requires the student to be provided monthly with thirty minutes of social work services outside the general education classroom, including four thirty-minute sessions during Extended School Year (ESY), provided by the school social worker or the psychologist.
7. The student's BIP, completed on June 14, 2022, reflects:
- a. Target Behaviors:
    - i. Physical aggression: "hitting, smacking with an open hand, kicking, scratching, pinching either staff or students;"
    - ii. Verbal intimidation: "verbal threats made to others, encouraging other students to engage in aggressive or destructive behavior, social isolation of others, teasing, taunting and name calling of peers;"

- iii. Physical intimidation: “the pantomiming of physically aggressive acts (miming that he will hit/kick), moving into a student/staff member space, positioning himself in the classroom to restrict another peers’ movement.”
- b. Response Strategies:
- i. Physical aggression: Behavior #1: “Concise, precisely planned responses from staff to [the student] following an aggressive event to include: scripted response when the student begins/is engaging in the behavior, designated safe locations, and consistent debrief/problem solving following each event; scripted responses should include If/then statements explaining the consequence of continuing the behavior and how to return to the original setting; staff will not comment directly on the behavior or tell the student to stop a behavior; verbal responses from staff will be limited to statement of the expectation, available location and consequence;”
  - ii. Verbal intimidation: “Removal of audience/ peers or direction to a new location; limit verbal interaction to what the expectation is and how to achieve it; staff will not comment directly on the behavior or tell the student to stop a behavior; concise, precisely planned responses from staff to the student to interrupt the behavior: scripted response when the student begins/is engaging in the behavior, designated safe locations, and consistent debrief/problem solving following each event; scripted responses should include If/then statements explaining the consequence of continuing the behavior and how to return to the original setting;”
  - iii. Physical intimidation: “Removal of audience/ peers or direction to a new location; limit verbal interaction to what the expectation is and how to achieve it; staff will not comment directly on the behavior or tell the student to stop a behavior; concise, precisely planned responses from staff to the student to interrupt the behavior: scripted response when [the student] begins/is engaging in the behavior, designated safe locations, and consistent debrief/problem solving following each event; scripted responses should include If/then statements explaining the consequence of continuing the behavior and how to return to the original setting.”

Furthermore, the BIP reflects prevention strategies, teaching strategies, data collection, implementation, identified replacement or target behaviors, and means of progress monitoring.

- 8. There is email documentation from the student’s parent to the MCPS staff dated October 1, 2022, reflecting that the parent does not provide MCPS permission to use “physical management and restraint[,]” including both physical and mechanical restraints on the student “while at school or going to and from school.”
- 9. On January 4, 2023, the IEP team met with the purpose of reviewing and revising the student’s IEP. The Prior Written Notice generated after this IEP team meeting reflects that the IEP team agreed to the student “mainstreaming” in English Language Arts (ELA) on January 30, 2023. It further reflects that the IEP team agreed that this increase in “mainstream” time would include a check in and check out with the student’s “social emotional special education services” homeroom teacher. In addition, the IEP team agreed that the student should continue with social work services for thirty minutes per week, and that a regularly scheduled home-school phone call for two times per month or more would be established. The IEP team agreed to share the student’s visual menu with the ELA teacher

and parent. The IEP also agreed to share the student's independent speech and language evaluation with the school-based speech and language pathologist to determine if further discussion regarding the student's speech and language needs was warranted.

10. On January 26, 2023, and February 1, 2023, (continuation meeting), the IEP team met with the purpose of reviewing and revising the student's IEP. The Prior Written Notice generated after this IEP team meeting reflects that the IEP team agreed to a continuation IEP team meeting to allow time to discuss all agenda items including the student's crisis plan, IEP, and BIP. The PWN further reflects that the IEP team agreed to developing a plan on how and when to contact the student's parent during an incident that would require the student to be picked up from school, discussed the use of restraint during a crisis situation when the student is in danger of hurting himself or others, agreed to revise the crisis plan so that it would be clear, concise, and user friendly, the progress that the student was making towards the BIP goals, agreed to add more detail to the student's daily point sheet, discussed adding a supplementary aid of a "predetermined safe space and a goal to "teach him flexibility with academic problems." In addition, the IEP team agreed to correct the student's IEP to include the outside report conducted by the Kennedy Krieger Institute. The Prior Written Notice also reflects the parent's request for a reassessment of the student "because as he is progressing she wonders if he should be labeled high functioning autism instead of emotional disability."
11. There is documentation of a "Safety/Crisis Intervention" plan dated February 1, 2023. This plan includes definitions of a yellow, red, and blue zone. It further describes what the behaviors would look like in each zone and what the responses to those behaviors should be. The "Safety/Crisis Intervention" plan further reflects that the parent requests that no physical restraint be used with the student.
12. On April 17, 2023, and May 4, 2023, (continuation meeting), the IEP team met with the purpose of reviewing and revising the student's IEP. The Prior Written Notice generated after this IEP team meeting reflects that the IEP team agreed: to conduct a reevaluation planning meeting for September 2023; to discuss the proper testing to administer in order to qualify the student for an eligibility coding of autism; to add a self-management goal to include objectives focused on staying on topic; use of a graphic organizer; and accepting feedback; to invite speech and language pathologist to the next IEP team meeting; and to further the discussion regarding the student's BIP and safety plan.
13. The student's IEP developed on April 17, 2023, requires the student to be provided with goals in the areas of:
  - a. Social Emotional Behavioral (goal one): Given verbal and non-verbal prompting, visual cues, direct support in strategies, [the student] will interact safely with staff and students during unstructured times, e.g., recess/lunch/breaks in the mainstream classroom in 4 out of 5 trials.
  - b. Social Emotional Behavioral (goal two): Given direct instruction in emotional regulation strategies, a menu of calming strategies, opportunities to practice in isolation with adults and peers, and fading adult support, [the student] will demonstrate appropriate behavior when annoyed or angry with others in 3/5 opportunities.
  - c. Social Emotional Behavioral (goal three): Given direct instruction in problem solving, active listening, and in isolation with adults and peers, and fading adult support, [the student] will

be able to process incidents with staff and any peers involving by taking ownership of his actions, identifying the other person's point of view, and agreeing to a mutual solution from processing (e.g. in the future what is a better choice for him to do) in 4 out of 5 trials.

- d. Self- Management: With teacher support, checklists, and agenda book, [the student] will complete his assigned classwork and homework, finishing all parts, writing his work down, and accepting teacher feedback to go back and double check his work.
  - e. Social Interaction Skills: Given adult support, visuals, social skill training, and modeling [the student] will use positive language to interact with peers in a variety of settings (e.g. classroom, recess, lunch, specials) in 4 out of 5 trials.
14. The student's IEP developed on April 17, 2023, reflects that the student does not have a BIP; however, the student does have a BIP.
  15. The student's IEP developed on April 17, 2023, requires the student to be provided daily with five hours and fifty-five minutes of classroom instruction in the general education classroom provided by the general education teacher, instructional assistant, or the special education teacher. In addition, it requires the student to be provided daily with thirty minutes of classroom instruction outside the general education classroom provided by the special education teacher, general education teacher, or instructional assistant. The IEP further requires the student to be provided monthly with two-thirty minutes of social work services outside the general education classroom provided by the school social worker or the psychologist.
  16. On May 4, 2023, the IEP team met with the purpose of reviewing and revising the student's IEP. The Prior Written Notice generated after this IEP team meeting reflects that the IEP team updated the student's present level of performance, including the speech and language pathologist's informal speech observation. The Prior Written Notice further reflects that the IEP team discussed the results of a speech and language informal assessment, the speech and language pathologist shared that "she has no concerns in either the area of pragmatics or articulation re: the student's current speech skills. She observed that the student's use of a "baby voice" seems to only occur when he is dysregulated and is not impacting him academically."
  17. On September 28, 2023, the IEP team met with the purpose of reviewing and revising the student's IEP. The Prior Written Notice generated after this IEP team meeting reflects that the IEP team agreed to updated testing in the areas of academic, social/emotional, and psychological. In addition, the IEP team agreed to complete a rating scale for Attention Deficit Hyperactivity Disorder and autism. Parental consent to complete these assessments was obtained on October 2, 2023.

**Allegation #1: EVALUATED STUDENT IN ALL AREAS OF SUSPECTED DISABILITY**

The complainant brought the concern about the additional disability of autism to the IEP team in February 2023. The team did not act on that concern until October 2023, when they agreed to complete rating scales. At the time of this investigation, no results were available, resulting in a delay of over eight months in responding to the complainant's concerns.

Based on the Findings of Facts #1, #2, #9, #12, #16, and #17, MSDE finds that the MCPS has not ensured that the student was evaluated in all areas of suspected disability since October 2022, in accordance with 34 CFR §§300.303 - .306 and COMAR 13A.05.01.06. Therefore, this office finds a violation occurred with respect to allegation #1.

**Allegation #2: DEVELOPED AN IEP AND BIP THAT ADDRESSED THE STUDENT'S IDENTIFIED BEHAVIORAL NEEDS**

Based on the Findings of Facts #1- #7, #9- #15, MSDE finds that the MCPS has developed an IEP and BIP that addressed the student's identified behavioral needs since October 2022, in accordance with 34 CFR §300.324. Therefore, this office does not find a violation occurred with respect to allegation #2.

**ALLEGATION #3: PROVISION OF SOCIAL/EMOTIONAL AND BEHAVIORAL SUPPORTS**

**FINDINGS OF FACTS:**

18. There is documentation that the student has been provided with monthly social work services since October 2022, as required by the student's IEP.
19. While there is some documentation of the provision of social/emotional and behavioral accommodations, the documentation does not demonstrate consistent provision of all social/emotional and behavioral accommodations since October 2022.

**CONCLUSIONS:**

**Provision Of Monthly Social Work Services**

Based upon Findings of Facts #6, #15, and #18, MSDE finds that the MCPS has ensured that the student was provided with the social/emotional and behavioral supports, specifically monthly social work services, as required by his IEP, since October 2022, in accordance with 34 CFR §300.323. Therefore, this office does not find a violation occurred with respect to this aspect of allegation #3.

**Provision of Special Considerations and Accommodations to Address Behavioral Needs**

Based upon Findings of Facts #4 and #19, MSDE finds that the MCPS has not ensured that the student was provided with the social/emotional and behavioral supports, specifically special considerations and accommodations to address his behavioral needs, as required by his IEP, since October 2022, in accordance with 34 CFR §300.323. Therefore, this office finds a violation occurred with respect to this aspect of allegation #3.

**ALLEGATION #4: PROPER PROCEDURES WHEN USING PHYSICAL RESTRAINT AND SECLUSION**

**FINDINGS OF FACTS:**

20. The School Bus Discipline Report generated on October 13, 2023, by MCPS staff reflects that the student's infractions as "attack on adult, disobedient or disrespectful to the operator, disruption, and throwing objects out of the bus window."
21. There is email documentation for the MCPS staff to the student's parent reflecting that on October 13, 2023, the student was "involved in one emergency situation...This resulted in the use of restraint by staff specifically trained in the use of safe physical restraint procedures. The physical restraint occurred because the student exhibited unsafe behavior and was unresponsive to staff re-directions."

22. The “Single Incident Restraint Documentation” generated on October 13, 2023, reflects that the student’s current BIP does not include the provision of restraint. It further reflects that “alternative efforts to de-escalate the student were made: voluntary removal of the student to another location, reminder of rules, verbal interventions & de-escalation techniques, provide choices.” In addition, it states the description of what staff tried to do prior to the restraint: “staff responded to the issue of student harming the bus driver and entered the bus in an effort to instruct him to leave the bus. They tried redirecting him, provided options of waiting outside or inside the school, assistance with his concerns about image while leaving the bus and departing discreetly.” The documentation also reflects that the student was causing “threat of imminent, serious physical harm to others with behaviors prompting the restraint: staff had known that the student had harmed the bus driver with a wooden object, and he started to escalate when he was told he needed to leave the bus. The student’s face was angry, and he blocked the aisle with his legs and arms and was chanting a “nope” song disrespectfully. After he was transported off the bus, he bit the paraeducator on the right arm and started kicking high and low.” It is also reflected that the “circumstances meeting imminent, serious physical harm: was that the forceful kicks high and low could have caused serious physical harm.”
23. A review of video footage from the bus does not confirm the written documentation from the incident. When staff entered the bus, there was no imminent threat or crisis situation. Unfortunately, the driver had been harmed approximately 5 minutes prior to staff entering the bus and restraining the student. The student was calm prior to the staff attempting to grab his “string implement” from outside the bus window. There was no attempt to speak to the student or deescalate the situation prior to trying to grab his material from him. There were no attempts to use less intrusive interventions. Once inside the bus, staff immediately told the student his mother was called, tried to take the string implement away, put hands on the student to remove him from the bus, and escalated the situation. The video shows that the student was placed in a restraint hold inconsistent with those used by the Crisis Prevention Institute (CPI) prior to the time when he began to bite and kick staff. The review of video footage further demonstrates that the student was not secluded on October 13, 2023.

## **CONCLUSIONS:**

### **Restraint**

Restraint under the Maryland law states the use of physical restraint is prohibited in public agencies and nonpublic schools unless physical restraint is necessary to protect the student or another individual from imminent, serious physical harm; and other less intrusive, nonphysical interventions have failed or been determined to be inappropriate for the student.

Based upon Findings of Facts #3, #7, #8, #10, #11, and #20- #22, MSDE finds that the MCPS did not follow proper procedures when using physical restraint with the student on October 13, 2023, in accordance with COMAR 13A.08.04.05. The MCPS staff did not exhaust nonphysical interventions prior to use of the restraint. Therefore, this office finds a violation occurred with respect to this aspect of allegation #4.

### **Seclusion**

Based upon Findings of Fact #23, MSDE finds that the MCPS did not utilize seclusion with the student on October 13, 2023, in accordance with COMAR 13A.08.04.05. Therefore, this office does not find a violation occurred with respect to this aspect of allegation #4.



**CORRECTIVE ACTIONS/TIMELINES:**

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

MSDE has established reasonable time frames below to ensure that noncompliance is corrected in a timely manner.<sup>2</sup> This office will follow up with the public agency to ensure that it completes the required actions consistent with the MSDE Special Education State Complaint Resolution Procedures.

If the public agency anticipates that any of the time frames below may not be met, or if either party seeks technical assistance, they should contact Ms. Diane Eisenstadt, Compliance Specialist, Family Support and Dispute Resolution Branch, MSDE, to ensure the effective implementation of the action.<sup>3</sup> Ms. Eisenstadt can be reached at (410) 767-7770 or by email at [diane.eisenstadt@maryland.gov](mailto:diane.eisenstadt@maryland.gov).

**Student Specific:**

MSDE requires the MCPS to provide documentation by February 23, 2024, that the student is receiving the special considerations and accommodations to address his behavioral needs as required by his IEP, that a tracking system has been developed to monitor the provision of his behavioral accommodations, and that the IEP team has convened and determined the amount and nature of compensatory services or other remedies to redress the violation related to the lack of special considerations and accommodations to address his behavioral needs and the lack of proper use of a restraint. The IEP team must develop and implement a plan for the provision of those services within a year of the date of this Letter of Findings. The student's parent retains the right to file mediation and due process in response to this allegation.

**School Based:**

By March 1, 2024, the Special Education Staff at [REDACTED] School, and other staff involved in the implementation of the IEP or BIP for this student, must receive professional development and training on the proper procedures required to determine the appropriate use of restraint.

Any and all materials used to present these trainings should be submitted to MSDE no later than 10 days after each training, in addition to attendance and participation sheets that staff should sign off on to demonstrate the receipt of these training sessions.

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

<sup>3</sup> MSDE will notify the public agency's Director of Special Education of any corrective action that has not been completed within the established timeframe.

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,

Antoine L. Hickman, Ed.D.  
Assistant State Superintendent  
Division of Early Intervention/Special Education Services

ALH: sd

c: Dr. Monifa B. McKnight, Superintendent, MCPS  
Ms. Diana Wyles, Associate Superintendent, MCPS  
Mr. Zvi Greismann, Senior Attorney, Special Education, MCPS  
[REDACTED]  
Ms. Alison Barmat, Branch Chief, Family Support and Due Process, MSDE  
Dr. Paige Bradford, Chief, Specialized Instruction, MSDE  
Ms. Sarah Denney, Complaint Investigator, MSDE  
Ms. Diane Eisenstadt, Compliance Specialist, MSDE  
Ms. Nicol Elliott, Section Chief, Monitoring and Accountability, MSDE