


February 13, 2024




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

RE: 
Reference: #24-104

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 December 15, 2023, MSDE received a complaint from , hereafter, “the complainant,” on behalf of her son. 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 followed proper procedures when using seclusion since August 2023, in accordance with COMAR 13A.08.04.05.
2. The MCPS has not provided the student with special education and related services in the placement required by the Individualized Education Program (IEP) since August 2023, in accordance with 34 CFR §§300.114, and .116.
3. The MCPS has not ensured that a special education teacher has provided the student with special education instruction as required by the Individualized Education Program (IEP) since August 2023, in accordance with 34 CFR §§300.101 and .323.
4. The MCPS has not ensured that the student has been consistently provided with the dedicated adult support and speech/language-related services required by the IEP since August 2023, in accordance with 34 CFR §§300.101 and .323.

5. The MCPS has not developed and implemented an IEP that addresses the student's identified social, emotional, and behavioral needs since August 2023, in accordance with 34 CFR §§300.101 and .324.

BACKGROUND:

The student is thirteen years old and is identified as a student with Autism under the IDEA. From 2018 to 2023 the student attended [REDACTED]. He attended the Autism Resource Services (ARS) Program at [REDACTED] ([REDACTED]) from August 2023 to January 2024. In December 2023, the IEP team at [REDACTED] placed the student at the [REDACTED]. The student began attending the [REDACTED] in January 2024. The student has an IEP that requires the provision of special education instruction and related services.

FINDINGS OF FACTS:

1. In August of 2023, the student began sixth grade at [REDACTED] in the Autism Resource Services (ARS) program. At that time, the student had a Behavior Intervention Plan (BIP), dated February 11, 2022, in place. The behaviors addressed by this BIP were task avoidance, out-of-area (leaving the assigned instructional area), and inappropriate touching (hands in front or back of own pants). Data from the Functional Behavior Assessment (FBA) conducted to develop the student's BIP stated that the student engaged in inappropriate touching eight times per day on average, and the trigger for this behavior was when the student was given independent tasks. The replacement behavior for inappropriate touching was for the student to keep his hands out of his pants and above the waist and to ask to go to the bathroom in order to earn a preferred item or activity. The criterion for success was to decrease the average occurrences of inappropriate touching to no more than three times per day. The teaching strategies provided in the BIP were reading social stories, reviewing PAW rules, visual cues, and reminders of preferred items/activities earned. There were no response strategies provided for staff and students to use to minimize the reinforcing value of the behaviors.
2. The IEP in place for this student in August 2023, is dated March 10, 2023, and was amended on March 27, 2023. The IEP lists the student's primary disability as autism, and states that the student benefits from continued opportunities for social interactions with same-aged peers and clearly outlined expectations. According to the student's IEP, he is on the Maryland High School Diploma track. The student's present levels of academic achievement and functional performance reflect that he was on a third-grade level in reading comprehension and math calculation; the end of third/beginning of the fourth-grade level in math problem solving; a second-grade level in written language expression; and below age expectancy in speech-language pragmatics, communication, social interaction skills, self-management, and advocacy. The IEP reflects that the student had a BIP dated January 27, 2023. The student's special considerations and accommodations included general administration directions clarified, read aloud, and repeated as needed; redirect student; graphic organizer; small group; frequent breaks; reduce distractions to self and to others; a calculation device and mathematics tools on calculation and non-calculation sections of the mathematics assessments; speech-to-text response in mathematics, science, and government; monitor test response; ACCESS for ELL scribe; and extended time (1.5x). The IEP also states that the student receives English as a Second Language (ESOL) instruction once a week. The supplementary aids, services, program modifications, and supports provided by the IEP included a daily checklist with expectations and tasks; use of a word bank to reinforce vocabulary and/or when extended writing is required; monitor independent work; repetition of directions; use pictures to support reading passage whenever possible; delete extraneous

information on assignments and assessment when possible; break down assignments into smaller units; social skills training; frequent eye contact/proximity control; provide frequent changes in activities or opportunities for movement; and encourage/reinforce appropriate behavior in academic and non-academic settings. The student had IEP goals in the areas of written language expression, self-management, communication, math problem-solving, math calculation, reading comprehension, speech and language pragmatics, advocacy, and social interaction skills. The IEP required the student to receive 25, forty-five minute sessions of classroom instruction provided by a special education teacher or instructional assistant outside of general education weekly in a separate special education classroom in the ARS program for reading intervention, English, math; and resource, and 15, forty-five minute sessions of classroom instruction provided by a general education teacher, special education teacher, or instructional assistant inside general education weekly in a co-taught setting by a general education teacher, special education teacher, or instructional assistant for science, art, and physical education. The student was also to receive 3, forty-five-minute sessions of speech/language therapy monthly outside of the general education setting. Additionally, the related service of transportation, including a safety vest and an attendant, was provided. The least restrictive environment for the student was determined to be the ARS Program at [REDACTED].

3. The most recent psychological assessment report completed for the student, dated March 3, 2023, reflects that the student has a full-scale IQ of 96, which falls within the average range in comparison to peers of the same age. Adaptively, the student was deemed to be in the low average range and showed behaviors closely related to autism in the areas of social communication, unusual behaviors, peer socialization, social/emotional reciprocity, atypical language, and behavioral rigidity. The student also displayed more elevated behaviors in the areas of adult socialization, stereotype, and sensory sensitivity while at school. The report reflects that the student was reported to benefit from low-tone rooms where there is not too much noise. He is relationship-driven and works best with trusted adults. The report also stated that the student may benefit from continued opportunities for social interactions with peers of the same age.
4. On August 29, 2023, the student inappropriately touched another student, as well as a teacher. On August 30, 2023, the MCPS put a "Supportive Measures Plan" in place for the student. The plan start date was August 30, 2023, and the proposed end date was listed as June 13, 2023. The plan included staff supports for the student, inclusive of the request for a one-to-one dedicated aide, a change of seating assignments to prevent the student from sitting near the student he inappropriately touched, a change in buses for the afternoon bus ride, speech pathologist support and communication with the student's teachers. Noted on the Supportive Measures Plan is the need to "[Give the] student time to transition and settle...possible BIP." The student was not to be seated near the student who was touched on August 30, 2023, and the student was to ride a different bus in the evening. The complainant and the student signed off on the plan. For this incident, the student received three days of in-school suspension.
5. There is documentation that the student was placed on a Behavior Contract on September 13, 2023. The behavioral goal listed on the behavior contract data sheets is listed as "[The student] will begin a task with no more than 2 prompts within 2 minutes."
6. On October 11, 2023, the IEP team at [REDACTED] met at the request of the complainant. According to the Prior Written Notice (PWN), the team determined that the accommodations and supplementary aids and services in the student's IEP would remain the same, and new goals and objectives for speech

were developed. The PWN also stated that “An FBA [would] be conducted for consideration of the need for a Behavior Intervention Plan...Based on the results of the FBA a BIP may be required to address [the student’s] behaviors systematically.”

7. The IEP developed from this meeting, dated October 11, 2023, instituted two new speech and language goals, a new social/emotional/behavioral goal for the student concerning remaining in his designated area, and removed the student’s communication goal. All of the student’s other services and accommodations remained the same.
8. On October 13, 2023, the complainant provided consent for an FBA. Information from the FBA reflects that “the student [had] been displaying a pattern of repeated and frequent challenging behaviors that have the potential for imminent and serious harm to himself and others...The harmful behaviors are demonstrated by touching or attempting to touch his peers and adults inappropriately. He is also engaging in disrobing by pulling his pants down in the classroom and hallway. The behavior significantly interferes with his learning and the learning of others. He is not responding to other least restrictive universal behavior interventions.” The FBA states that the ARS program provides students with a low student/teacher ratio, adult support for academics, transition support, social skills instruction, and behavioral support. It also states that the student required direct adult support for safety during transitions, systematic delivery of reinforcement for shaping appropriate behaviors, a token board, behavior contract, and modified instruction. The FBA reflects that at the time of its development, the student was unable to attend co-taught classes due to his interfering behaviors and had received six days of out-of-school suspension and one and a half days of in-school intervention. It is also stated that the student was dismissed from his BIP in 2021 due to improved behaviors at his previous school. To develop the student’s BIP, the team collected data from October 2, 2023 to October 31, 2023. Parent input was included in the data used to develop the BIP.
9. There is documentation that on October 23, 2023, the student was accused of committing a sexual assault on another student when he “put his hands down the pants of [the other student], then pulled [the student’s] pants down.” For this incident, the student received three days of out-of-school suspension. A “Supportive Measures Plan” was again put in place for the student, however, this plan was “continuous - ongoing.” The plan included changing the student’s schedule on October 27, 2023, and allowing him to “gradually re-enter [the] ARS Program.” Student supports included in the plan were having the student “[avoid] contact with touching adults or students” while the plan was in effect, asking for permission, check-ins with the school counselor, additional staff to provide support to the student, and the process of a FBA and BIP, as well as scheduling an IEP meeting.
10. Documentation in the form of an email dated January 11, 2024, reflects that starting on October 26, 2023, the student began receiving support in the “reboot room” full-time.
11. The “reboot room” does not constitute seclusion because the room is free of objects and fixtures with which a student could self-inflict bodily harm; the room has adequate lighting and ventilation; and the door of the “reboot room” does not lock. Additionally, according to the MCPS, there was an adult in the “reboot room” with the student at all times, and the “reboot room” is located adjacent to another room, separated by an open door, that other disabled and nondisabled students utilized as well. The MCPS also asserts that due to the student’s behavior of inappropriately touching and exposing himself, other students, and staff members, it was necessary to place the student in the “reboot room” to

prevent further inappropriate behavior of that nature. The student was not prevented from leaving the room, and staff were in place to ensure that the student did not harm himself or others.

12. In an email dated October 27, 2023, MCPS staff asked the student's parents to drop him off at school in the morning because he and the student whom he had inappropriately touched rode the same bus. It was stated that this was a temporary adjustment that was best for both students at that time. The complainant responded to this email the same day, asking how long the student would need to be dropped off and to be provided with contact information for transportation services. In response to the complainant's concerns, MCPS staff stated that they did not have an answer regarding how long the student would need to be brought to school as "...it all depends on what is available", however, it was relayed that [REDACTED] had inquired. It was reiterated that the student would need to be brought to school in the morning until a decision was made.
13. On November 7, 2023, the student was accused of engaging in sexual harassment toward two staff members when he "...touched a female staff member's backside and [put] his face close to her backside and breast, [and]put his hand up the shirt of a male staff member." For these infractions, the student received three days of out-of-school suspension.
14. On November 8, 2023, the complainant again contacted MCPS staff regarding the student's transportation. In that email, the complainant reflected that in a voicemail from MCPS staff, it was stated that the student should be transported to and from school until the investigation was finished and a call would be made to transportation to cancel his service. The complainant expressed that she had not received the contact information for transportation services that she had requested previously, and asked if there was an alternative way that the student could be transported as he is a student who is to receive transportation services based on his IEP. The complainant also expressed that while she understood the need to ensure the safety and well-being of all of the students involved, the current arrangement was causing hardship for her family. The complainant requested that the school look into transportation alternatives and make her aware of any next steps required from her to resolve the issue. In a response dated November 16, 2023, MCPS staff told the complainant that the student could ride his regular afternoon bus effective November 17, 2023, and she would be contacted to further discuss the student's morning transportation concerns.
15. Documentation in the form of an email dated January 11, 2024, reflects that on November 14, 2023, the student was removed from the bus.
16. On November 17, 2023, the team at [REDACTED] decided to execute a plan that would provide the student with the support of male paraeducators during the school day.
17. On November 21, 2023, the IEP team at [REDACTED], met to review and revise the student's IEP. The PWN states that the team proposed to implement the BIP that had been developed, place the student in self-contained classes for 100% of the day, and request a Central IEP team referral. According to the PWN, the team considered whether or not the student's needs could be met at [REDACTED] in the ARS program. The team reviewed "parental input, secondary teacher reports, marking period one grades, behavior contracts, behavior documentation sheets, case manager observations, and the student's current FBA and BIP." It was documented that the complainant did not agree with the school team's recommendation for self-contained classes for 100% of the school day, and she also believed that the student's needs could be met at [REDACTED].

18. The updated BIP developed for the student, dated November 21, 2023, considered the behaviors of eloping (leaving the designated area without permission), disrobing (pulling down pants and exposing private parts), inappropriate touching (touching himself in public area and/or others without permission), and noncompliance (yelling “no”, body dropping, and refusing to follow adult directions). The hypothesized functions of these behaviors were eloping to access a preferred item or activity; disrobing to gain attention from adults; inappropriate touching peers or adults to escape or gain attention; and noncompliance in order to escape from unwanted demands. The desired replacement behavior was for the student to make an appropriate request for a desired item or activity without the interfering behaviors of eloping, disrobing, touching, and noncompliance. The strategies developed to prevent the problem behaviors were adult support, proximity control, frequent breaks, behavior contract, token board, reinforcement, transition support, rule reminders, and social stories. The teaching strategies to increase the replacement behaviors were that the student should receive explicit instruction on how to make choices, request help, reject items, and protest appropriately throughout the day, and should be given opportunities for instruction to use functional language; when the student is presented with a non-preferred item or task and begins to demonstrate overt signs of frustration staff should immediately prompt him to request adult assistance or reject/protest the item and once he begins to demonstrate independence verbally using his words staff should fade their prompts; and staff should use rule cards during transitions through the room/school in conjunction with a choice board and receive the desired activity when he transitions without eloping. Response strategies are provided for staff when the student exhibits the specified problem behaviors. Specifically, if the student disrobes or engages in inappropriate touching, the staff was to say nothing about the behavior but should use the student’s name, or provide eye contact, block the behavior when possible and redirect him to a task, and review the student’s token board and remind him of what he was working for. Goals were established for the behaviors of eloping, disrobing, inappropriate touching, and noncompliance. The goals for disrobing and inappropriate touching included faded adult support, visual and auditory cues, and a motivational system. Materials, training, and other supports needed to implement the BIP included working with the SLP to develop a choice board and rule cards and training teachers and paras on the implementation of the BIP teaching strategies for requesting and refusing appropriately, and transition support. The BIP reflects that data would be collected as behaviors occurred and reviewed and analyzed bi-weekly, and “...if [the] behavior intervention plan [was] not helping to reduce the problem behavior within six months of being implemented, the team [would] revise and modify the behavior intervention plan.” Data collection showed that the student’s most pervasive behaviors were non-compliance which had occurred thirteen times during the collection period, and leering/inappropriate touching which had occurred twenty-eight times during the collection period. Placing the student in the “reboot room” was not listed as a strategy in the updated BIP.
19. On December 21, 2023, the IEP team at [REDACTED] held a Central IEP Placement team meeting. The PWN reflects that at this meeting the team proposed that the student’s educational and behavioral needs could not be met at [REDACTED], and placement at the [REDACTED] was recommended. Based on the student’s behavior contracts and documented behavior, the team suggested that the student would still require self-contained classes for the entire school day. The complainant disagreed with the recommendation of self-contained classes for the entire school day and placing the student at the [REDACTED]. The PWN reflects that the team reviewed parental input, secondary teacher reports, behavior contracts, behavior documentation sheets, case manager observations, and the program at [REDACTED] to make the placement decision. The documented parent concerns expressed at this meeting included the lack of communication from the school team, comments included in the

FBA, suspensions that the student had received, placement of the student in the “reboot room” and the instruction that he was being provided, placing the student in self-contained classes for the entire school day, the fact that the behavior being described at school is not anything that is seen at home or in the community, and comments written about the student on his behavior contract.

20. In an email dated January 12, 2024, the complainant told MCPS staff that she wanted the student out of [REDACTED] and transferred to [REDACTED] as soon as possible.
21. In an email dated January 18, 2024, MCPS staff confirmed that the student was enrolled at [REDACTED], but his bus services were not set to begin until January 23, 2024, although the request had been made to have bus services start on January 22, 2024. The email also reflects that the complainant had been asked to provide the dates that the student had to be parentally transported to school due to the lack of MCPS providing the service to allow for MCPS to provide reimbursement.
22. The student began attending the [REDACTED] on January 22, 2024.
23. There is documentation that the student’s only days of absence from school were days that he had received an out-of-school suspension. Those dates were October 24, 25, and 26, 2023, and November 8, 9, and 10, 2023.
24. There is documentation that a safety/escort plan for the student was developed that reflects adult support through an escort to each class and during dismissal. The plan also denotes what staff member would provide the complainant with progress updates and communicate with the complainant if there were any issues.
25. The student’s schedule reflects his instruction in general education and special education classes, as well as what staff would provide support in those settings. Additionally, the schedule reflects interventions, movement breaks, and speech/language therapy sessions.
26. There is documentation that the student received four 45- minute sessions of speech and language services in September 2023, one 34- minute session in October 2023, three 45- minute sessions in November and December 2023, and one 45-minute session in January 2024.
27. The student’s behavior contract data sheets reveal that on 38 days from September 13, 2023, to January 12, 2024, he received some form of instructional support from a general education teacher, special education teacher, or instructional assistant. It appears that the student joined at least one class outside of the “reboot room” on 16 of the twenty-four days from September 13, 2023, to October 20, 2023.
28. Behavior contract data sheets from November 15, 2023, to January 12, 2024, do not reflect that the student joined any of his classes during those 20 days, and notations of the student completing or attempting to complete assignments are documented on 14 of those days. There is only documentation of the student’s behavior for 5 of those days, and there is nothing provided for 1 of those days.
29. The student’s behavior contract data sheets reveal that on the thirty-eight days from September 13, 2023, to January 12, 2024, he received support from an instructional assistant. On four of those days, there is no sign-off from a staff member, however, teacher comments on the back of the

form reflect some or all of the student's engagement with his classes or receiving assistance with classwork in the "reboot room".

30. Work sample documentation denotes the provision of instructional supports for the student for 12 of the 46 days that the student was continually placed in the "reboot room" since October 26, 2023. The dated work samples span from November 28, 2023, to December 12, 2023. Other work samples provided are dated before October 26, 2023, or are not dated and cannot be considered for this investigation. There are only four work samples provided that denote the provision of social skills.
31. MCPS has provided no documentation that the student's transportation services have been reinstated, only that they were expected to start on January 23, 2024.
32. Documentation dated January 11, 2024, reflects that a Formal Complaint of Title IX Sexual Harassment investigation determined that "...the conduct of [the student did] not meet the definition of Title IX Sexual Assault, nor has the necessitated level of severity been demonstrated, [however, the MCPS is not precluded from] taking additional action under MCPS Regulation JHF-RA, Student Bullying, Harassment, or Intimidation, per the MCPS Student Code of Conduct, as determined by school administration."

CONCLUSIONS:

Allegation #1

PROPER DISCIPLINARY PROCEDURES

The issue in the first allegation is did the MCPS follow proper procedures when secluding the student. Maryland law states that the use of seclusion is prohibited in public agencies. (COMAR 13A.08.04.05) The structure of the "reboot room" did not constitute placing the student in seclusion as defined in COMAR 13A.08.04.02B(20). The student was not prevented from leaving the room, and there was staff in place at all times to ensure that the student did not harm himself or others.

Based on the Findings of Facts #3 and #11, MSDE finds the MCPS has not utilized seclusion for the student since August 2023, in accordance with COMAR 13A.08.04.05. Therefore, this office finds that a violation did not occur with respect to the allegation.

Allegation #2

SPECIAL EDUCATION AND RELATED SERVICES IN THE PLACEMENT REQUIRED

The issue in the second allegation is whether the MCPS provided the student with special education and related services in the placement required by the student's Individualized Education Program (IEP). Each public agency must ensure that to the maximum extent appropriate, based on their IEP, children with disabilities are educated with children who are nondisabled; and other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. (34 CFR §§300.114 and .116)

COMAR 13A.08.03.05 states that a removal constitutes a change of placement if a student with a disability is removed from the student's current placement for more than 10 consecutive school days; or subjected to a series of removals that constitutes a pattern of removal that accumulates to more than

10 school days in a school year. To determine if the removal constitutes a pattern of removals, the IEP team shall consider the length of each removal; the total amount of time the student is removed; and the proximity of the removals to one another.

The student's March 2023 IEP as amended required that he receive 25, forty-five minute sessions of classroom instruction outside of general education weekly in a self-contained classroom and 15, forty-five minute sessions of classroom instruction inside general education weekly in a co-taught setting with para support. Documentation reflects that prior to October 26, 2023, the MCPS utilized the "reboot room" as a place for the student to temporarily receive his instruction and services when he exhibited extremely inappropriate and/or disruptive behavior. This instruction was provided by his general education teacher, special education teacher, or instructional assistant as determined by his IEP. However, after October 26, 2023, the student received his services and instruction in the "reboot room" for the entirety of the school day. In this case, documentation shows that the student was placed in the "reboot room" for forty-six consecutive days for the entire school day from October 26, 2023, to January 12, 2024. Placing him in the "reboot room" for forty-six days constituted a change in placement for the student.

Based on the Findings of Facts #2 to #3, #6 to #8, #10, #17 to #18, #23, #25 to #26, and #28, MSDE finds the MCPS has not provided the student with special education and related services in the placement required by the Individualized Education Program (IEP) since August 2023, in accordance with 34 CFR §§300.114 and .116. Therefore, this office finds that a violation did occur with respect to the allegation.

Allegation #3

PROVISION OF SPECIAL EDUCATION INSTRUCTION BY A SPECIAL EDUCATION TEACHER

The issue in the third allegation is whether a special education teacher provided the student with special education instruction as required by his IEP. This allegation also considers whether a special education teacher provided instruction when the student was in the "reboot room." As soon as possible following the development of the IEP, special education, and related services must be made available to the child in accordance with the child's IEP. (34 CFR §300.323) According to his IEP, the student's instruction was to be provided by a general education teacher, special education teacher, or instructional assistant. Documentation demonstrates that although the student was sometimes placed in the "reboot room" prior to October 26, 2023, this change was intermittent and the student did have access to his regularly scheduled classes and his special education and general education teachers. However, after October 26, 2023, the student's placement was changed and he no longer had access to his scheduled classes and teachers.

In this case, according to his IEP dated March 10, 2023, and all amended IEPs through January 24, 2024, the student was to receive 25, forty-five minute sessions of classroom instruction from a special education teacher or instructional assistant in the Autism Resource Services room for his reading intervention, English, math, and resource classes; and 15, forty-five minute sessions of classroom instruction in a co-taught setting for science, art, and physical education from a general education teacher, special education teacher, or instructional assistant. The student's behavior contract data sheets reflect that from September 13, 2023, to January 12, 2024, the student received instructional support from a general education teacher, special education teacher, or instructional assistant. Documentation reflects that from September 13, 2023, to October 20, 2023, the student joined at least one class outside of the "reboot room" on 16 days. Behavior contract data sheets from November 15, 2023, to January 12, 2024, do not reflect that the student joined any of his classes, and notations of the student completing or attempting to complete assignments are documented on 14 of those days with

support from an instructional assistant or special education teacher. For 5 of those days, there is only documentation of the student's behavior, and there is nothing provided for 1 of those days.

Based on the Findings of Facts #2, #6 to #7, #16 to #17, #23, #25, #27, and #29 MSDE finds the MCPS has ensured that a special education teacher or instructional assistant has provided the student with special education instruction as required by the Individualized Education Program (IEP) since August 2023, in accordance with 34 CFR §§300.101 and .323. Therefore, this office finds that a violation did not occur with respect to the allegation.

Allegation #4 PROVISION OF ADULT SUPPORT and SPEECH AND LANGUAGE SERVICES

The issue in the fourth allegation is was the student consistently provided with the dedicated adult support and speech/language related services as required by his IEP. The student's IEP did not require daily support from a dedicated aide. The student's behavior contract data sheets reveal that from September 13, 2023, to January 12, 2024, he received support from an instructional assistant on the thirty-eight days. On four of those days, there is no sign-off from a staff member, however, teacher comments on the back of the forms reflect the student's engagement with his classes or receiving assistance with classwork in the "reboot room".

Documentation reflects that the student is missing fifteen minutes of speech and language services from October 2023.

Based on the Findings of Facts #2, #4, #6 to #9, #16, #18, #23 to #29, and #30, MSDE finds the MCPS has ensured that the student has been consistently provided with the dedicated adult support and speech/language-related services required by the Individualized Education Program (IEP) since August 2023, in accordance with 34 CFR §§300.101 and .323. Therefore, this office finds that a violation did not occur with respect to the allegation.

ALLEGATION #5 DEVELOPMENT AND IMPLEMENTATION OF THE IEP

The issue in the fifth allegation is whether the MCPS developed and implemented an IEP that addressed the student's identified social, emotional, and behavioral needs.

In developing each child's IEP, the IEP team must consider the strengths of the child; the concerns of the parents for enhancing the education of their child; the results of the initial or most recent evaluation of the child; and the academic, developmental, and functional needs of the child. In the case of a child whose behavior impedes the child's learning or that of others, the use of positive behavioral interventions and supports, and other strategies, to address that behavior should be considered. (34 C.F.R. §§300.324)

In this case, the IEP in place when the student arrived at [REDACTED] provided behavioral, academic, and speech IEP goals in which the student was making sufficient progress. In addition to academic and communication supports, the IEP also provided behavioral supports in the form of social skills training, frequent changes in activities or opportunities for movement; and encouragement and reinforcement of appropriate behavior in academic and non-academic settings. Although the student's BIP addressed task avoidance, being out of area, and inappropriate touching of himself, it did not provide strategies for staff and students to utilize when the behavior occurred, nor did it consider strategies regarding the student touching others. However, the team at [REDACTED] conducted a new FBA and BIP to update the student's IEP to include two new speech and language goals and a new social/emotional/behavioral goal for the student concerning remaining in his

designated area. The team also developed a new FBA and BIP for the student that addressed eloping, noncompliance, disrobing, and inappropriate touching of himself and others. Thus, the new IEP that was developed for the student addressed the student's needs.

There is concern regarding the implementation of the IEP that was in effect when the student got to [REDACTED] in August 2023. Within the first few days of school, the student exhibited the behavior of inappropriately touching others. However, the only behavior goal that was included in his behavior contract did not address inappropriate touching, which was the most concerning behavior that the student was exhibiting, but instead focused on task avoidance. Moreover, although the behavior contract addressed social interactions and "safe body" which means staying in the area, keeping hands to self, and/or not taking items from another student's desk, there is nothing in the contract that demonstrates that the student was receiving explicit instruction with regard to inappropriate touching of others, an act that he received multiple suspensions for.

Additionally, the information included in the student's FBA dated October 13, 2023, reflects that the IEP team at [REDACTED] thought that the student's BIP had been discontinued in 2021, however, the IEP that the student arrived at [REDACTED] with states that the student had a BIP dated January 27, 2023, for which data had last been collected during ESY in the summer of 2023. Although the student's BIP may have needed to be updated, he did have a BIP in place that could have been utilized in the interim. Although the team at [REDACTED] did not include the "reboot room" as a behavioral strategy for the student in his IEP or BIP, it seems that it was utilized as the only strategy used to address the student's behaviors after October 26, 2023.

Based on the Finding of Facts #1 to #30, MSDE finds the MCPS has not developed and implemented an Individualized Education Program (IEP) that addresses the student's identified social, emotional, and behavioral needs since August 2023, in accordance with 34 CFR §§300.101 and .324. Therefore, this office finds that a violation did occur with respect to the allegation.

ADDITIONAL VIOLATION FOUND IN THE COURSE OF THE INVESTIGATION

The student was removed from the bus based on his behavior on October 27, 2023. The MCPS has provided no documentation that transportation services have been reinstated. As transportation is a service on the student's IEP, this is considered a disciplinary removal and subject to the procedural safeguards afforded students with disabilities pursuant to 34 CFR § 300.530. There is no documentation that a manifestation IEP team meeting was convened, or that the student was provided with any of the required safeguards.

Based on the Findings of Facts #12, #14 to #15, and #31, MSDE finds that MCPS has not followed proper disciplinary procedures regarding the disciplinary removal of the student.

CORRECTIVE ACTIONS/TIMELINES:

The IDEA requires that State complaint procedures include 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. 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.¹ This office will follow up with the public agency to ensure that it completes the required actions consistent with 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. Alison Barmat, Branch Chief, Family Support and Dispute Resolution Branch, MSDE, to ensure the effective implementation of the action.² Ms. Barmat can be reached at (410) 767-7770 or by email at alison.barmat@maryland.gov.

Student-Specific:

MSDE requires that no later than May 13, 2024, the MCPS must convene an IEP team meeting to determine the amount of compensatory services or other remedy that must be made available to the student with regard to his change of placement from October 26, 2023 to January 12, 2024. By that same date, the team must determine the amount of compensatory services or other remedy that must be made available to the student with regard to the lack of transportation provided to the student since October 27, 2023.

School-Based:

MSDE requires that no later than June 13, 2024, the MCPS must provide professional learning to the team at [REDACTED] with regard to what constitutes a “change of placement” for students with disabilities, what constitutes a disciplinary removal, and implementation of a student’s procedural safeguards in relation to the suspension of transportation services.

If the regulatory requirements are not being implemented, actions to be taken in order to ensure that the violation does not recur must be identified, and a follow-up report to document correction must be submitted within ninety (90) days of the initial date of a determination of non-compliance. Upon receipt of this report, MSDE will re-verify the data to ensure continued compliance with the regulatory requirements.

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.

¹ The United States Department of Education, Office of Special Education Programs (OSEP) states that the public agency corrects 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.

² MSDE will notify the public agency’s Director of Special Education of any corrective action that has not been completed within the established timeframe.

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

ALH/ebh

c: Dr. Monique Felder, Interim Superintendent, MCPS
Ms. Diana K. Wyles, Associate Superintendent, MCPS
Ms. Eve Janney, Compliance Specialist, MCPS
Mr. Gerald Loiacono, Supervisor, Resolution and Compliance Unit, MCPS
[REDACTED], Principal, MCPS
Dr. Paige Bradford, Section Chief, Specialized Instruction, MSDE
Ms. Nicol Elliott, Section Chief, Monitoring and Accountability, MSDE
Ms. Elizabeth Hendricks, Complaint Investigator, MSDE