


July 2, 2024




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

RE: 
Reference: #24-214

Dear Parties:

The Maryland State Department of Education (MSDE), Division of Early Intervention and Special Education Services, 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 May 3, 2024, the MSDE received a complaint from , 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 has not ensured that the student was consistently provided with the communication device and transportation services required by the Individualized Education Program (IEP) since September 2023, in accordance with 34 CFR §§300.101 and 323.
2. The BCPS did not ensure that the IEP team reviewed and revised, as appropriate, the student’s IEP to address the lack of expected progress toward achieving his IEP goals during the 2023-2024 school year, in accordance with 34 CFR §§300.101 and 324.
3. The BCPS has not followed proper procedures when disciplinarily removing the student from class during the 2023-2024 school year, in accordance with 34 CFR §300.530.

BACKGROUND:

The student is seven years old and is identified as a student with Multiple Disabilities under the IDEA. The student attends [REDACTED] and has an IEP that requires the provision of special education instruction and related services.

FINDINGS OF FACT:

1. On August 29, 2023, the IEP team convened to review the results of assessments requested at an IEP meeting held on July 18, 2023. The Prior Written Notice (PWN) generated after the meeting reflects that the speech-language pathologist (SLP) shared that some of the errors the student presented during the speech-language assessment were due to structural issues and some were compensating due to the student having a cleft palate/lip.

The assistive technology (AT) assessor shared that it was difficult to understand the student during conversation and recommended assistive technology to assist with communication. The student's mother and grandmother (family) agreed with the student's need for assistive technology.

The student's mother questioned how the team would be addressing the student's Attention Deficit Hyperactivity Disorder (ADHD). They stated that the student's ADHD diagnosis report, previously discussed at the July 18, 2023, IEP meeting, would be considered when developing the IEP through supplementary aids and accommodations.

The student's family shared that the student would be receiving more oral surgeries and a bone graft to "extend the pallet." The student's mother shared that the student's grandmother may also assist with "team and education matters", but the student's mother would maintain the rights to make educational decisions.

2. The student's disciplinary report reflects that between September 22, 2023, and September 26, 2023, the student received 6 disciplinary referrals. The behaviors included a physical attack on students and a staff member, refusing to cooperate with school rules and regulations, refusing to cooperate with school transportation regulations, failure to follow directions, harassment in the form of electronic communications to students or staff members which cause a nuisance, and disruptive behavior that resulted in "interference with the normal school program."

3. On September 27, 2023, the IEP team convened to develop the student's initial IEP and discuss Extended School Year (ESY) services. The PWN generated after the meeting reflects that the IEP team also determined to conduct reevaluation planning to consider the student's needs in fine motor and sensory processing based on data collected.

4. The IEP developed on September 27, 2023, reflects that the student's primary disability is Speech-Language Impairment (SLI). The areas affected by the disability are speech-language articulation, and self-management (e.g., executive functioning, organization, attention, etc.). The student's IEP requires:

- AT device(s) and AT service(s) "...to support his expression across individual topics, and settings...to support communication breakdown repair and clarification when needed.

He should be prompted to utilize the device when [he] is not understood by school staff or students.”

- The Supplementary Aids, Services, Program Modifications, and Supports required by the IEP include:
 - 80 location dynamic display speech generating device; daily; and
 - AT consult, periodically.
- The IEP provided a communication goal: “By September 2024, given unrestricted access to AAC and after 2 verbal attempts, [the student] will use his speech generating device to repair communication breakdowns by producing the utterance or by providing the context to participate in a conversation in at least 80% of opportunities as measured by clinical data and informal observations measured across 3 sessions.”
- The IEP required the following special education services:
 - One 30-minute session of Speech-Language Pathology services, weekly, outside general education.
- The Least Restrictive Environment (LRE) required by the IEP was inside general education (80% or more).

There is no documentation that transportation services were required.

5. The IEP progress report dated November 3, 2023, reflects the student was making sufficient progress to meet the communication goal.
6. The IEP team reconvened on November 14, 2023, to review and/or revise the student’s IEP, discuss the results of assessment reports, and conduct reevaluation planning. The PWN generated after the meeting reflects the student's classroom teacher reported the student is “much more intelligible than anticipated” and rarely needs to use his AT device to communicate. The student often prefers to communicate without his AT device, including when directed to do so when writing. He benefits from wearing noise-canceling headphones.

The IEP team reviewed the occupational therapy (OT) assessment report. The occupational therapist reported the student demonstrated sensory behaviors during the OT observation, and fine motor needs in handwriting. The student required adult reminders and support during transitions and demonstrated “limited endurance for standing or sitting”, which as a “postural control deficit may lead to difficulty with attending to tasks.” He demonstrated “decreased muscle tone and increased joint mobility”, and the student “becomes significantly overstimulated in an active environment.” The student’s behaviors during the school-based OT assessment were similar to those captured in the previous sensory assessment completed for the student in March 2023.

The IEP team reviewed the student’s behavior referrals and discussed the private March 2023 neuropsychological report. The school psychologist reported that the evaluation indicated the ADHD diagnosis, and the educational consultant stated that the data “also suggested a condition on the

autism spectrum.” The private neuropsychological assessment did not indicate the student met the criteria for Autism Spectrum Disorder (ASD). The student’s grandmother shared that she felt the student was dealing with more than ADHD. The occupational therapist stated that there is “a lot of overlap with behavioral, sensory processing dysfunction and ADHD.” The private neuropsychological report suggested the student should be monitored with regard to signs of ASD, to which the school psychologist stated that more information could be obtained by completing a psychological assessment. The educational consultant suggested a pragmatic assessment for the student, but the IEP team rejected this proposal because the speech-language pathologist stated the student “understands how to interact socially and knows rules of social situations even if he does not follow [them].”

The IEP team agreed to conduct a psychological assessment, classroom observations, and a Functional Behavior Assessment (FBA) to determine the present level of academic achievement and developmental needs and to determine if the student continues to meet the eligibility requirements for special education services. The psychological assessment would include formal ratings of social responsiveness and social communication to be completed by the parent/caregiver and teacher/staff.

The PWN reflects the FBA would address physical aggression and verbal disruption. The educational consultant inquired why the team had not addressed the student’s behavior at the prior IEP team meeting, and the school-based team shared that the student seemed to be adjusting well at the beginning of the year, however, the pattern of chronic interfering behaviors has manifested with time. The team reported the student received three daily scheduled and unscheduled breaks as needed and access to visual cues on his desk to choose coping strategies.

The IEP team further determined the student required behavioral and emotional support and would benefit from social work services.

The IEP team determined that the student required special transportation services to include additional supervision for bus safety.

7. On November 14, 2023, a “Request for Special Transportation Services” was submitted to request IEP transportation for the student from November 14, 2023, through September 27, 2024. The request included specialized equipment “a lap belt to stay in his seat for safety.” The request also states “[The student] requires an additional adult while on the bus to support with behaviors (i.e. staying in his seat, keeping his hands to self)”.
8. The student’s disciplinary report reflects that between November 7, 2023, and December 7, 2023, the student received four disciplinary referrals for physical contact/aggression, defiance, disrespect, and non-compliance.
9. On December 11, 2023, the IEP team convened to review and revise the student’s IEP. The PWN generated after the meeting reflects that based on teacher reports and data collected the team made the following changes to the student’s IEP:
 - The team determined to add visual motor, sensory processing, and social/emotional/behavioral to areas affected by the student’s disability.

- The team added social/emotional/behavioral, visual motor, and sensory processing strategies to the student's Present Level of Academic Achievement and Functional Performance (PLAAFP).
- The team added OT consult, sensory strategies, a home-school communication system, social skills training, and additional adult support to the supplementary aids, services, and program modifications in the IEP to "support with attention, task completion, social awareness, self-management with modeling and positive reinforcement, transition, the implementation of sensory strategies, and adhering to expected behaviors."
- The team updated the student's goals to include social awareness, self-management, and visual motor.
- The team added direct OT and social worker services to the IEP.

The PWN further reflects that the educational consultant requested a change in eligibility. The school-based team rejected the proposal until the additional assessments were completed and discussed at the next IEP meeting.

The IEP team added information to PLAAFP #2 in response to how the student's disability affects his involvement in the general education curriculum. PLAAFP #2 reflects that "His ADHD and difficulties with sensory processing are impacting his ability to self-regulate and participate in the classroom/school environment appropriately. [The student's] decreased visual-motor skills are impacting his ability to complete grade-level activities within the classroom routine."

The classroom teacher reported that incidents of physical aggression and verbal disruption had decreased slightly with the supports that had been put in place. It was noted that the student was still inconsistent in response to redirection and neither tickets nor time-outs had been effective during non-preferred activities, but the ticket system was effective for low-level challenges and time-outs sometimes helped the student to de-escalate.

The student was making meaningful contributions to class discussions and his areas of need included phonemic awareness, composing complete oral and written sentences, "recording mathematical strategies when solving problems, and completing written work thoroughly."

10. The December 11, 2023, IEP reflects that the student's primary disability is Speech-Language Impairments, with affected areas including speech-language articulation, self-management, social/emotional/behavioral, visual motor, and sensory processing strategies.
- The Special Considerations and Accommodations required by the IEP remained the same.
 - The Supplementary Aids, Services, Program Modifications, and Supports were continued from the previous IEP, and the following supports were added:
 - Home-school communication system;
 - Social skills training, daily;
 - Adult support, daily; and
 - Social worker consult, monthly.

- The PLAAFP in speech and language articulation remained the same, and the following information was added:
 - Social/Emotional/Behavioral: below grade level expectations
 - Visual Motor: below age-level expectations
 - Sensory processing strategies - below age-level expectations
 - The IEP goal in communication remained the same and the following goals were added:
 - Social Awareness - Expected Social Behavior: “By September 27, 2024, given adult modeling, proximity, and positive reinforcement, [the student] will demonstrate expected social behaviors (safe body, personal space, appropriate volume) in the classroom setting for a period of at least 10 minutes in 3 out of 5 targeted trials.”
 - Self-Management - Communicating Emotions in a Safe and Appropriate Way: “By September 27, 2024, in the classroom setting, during a moment of emotional upset, where [the student] previously communicated his feelings inappropriately (screaming, crying loudly, physical contact) given adult proximity, modeling, and positive reinforcement, [the student] will engage in a pre-taught strategy to self-regulate and return to learning within 10 minutes in 3 out of 5 targeted trials.”
 - Visual Motor: “By September 2024, [the student] will demonstrate improved visual-motor skills in order to complete age-appropriate tasks (i.e. handwriting, cutting) with minimal verbal/physical prompting and use of adapted materials as needed, with 80% accuracy in 3 out of 4 targeted trials.”
 - The special education services required by the IEP included the following:
 - Speech-Language Pathology Services - one 30-minute session weekly outside general education;
 - Transportation;
 - Occupational Therapy - one 20-minute session weekly outside general education; and
 - Social Work Services - one 30-minute session weekly outside general education.
 - The LRE required by the IEP was general education.
11. On January 4, 2024, the student received a disciplinary report for disruptive behavior.
12. The IEP team convened on January 10, 2024, to discuss the results of assessment reports and to review and revise the student’s IEP. The PWN generated after the meeting reflects the team reviewed the classroom observation and psychological assessments to determine the student’s continued eligibility. The PWN reflects that the school psychologist reported the results of the psychological assessment demonstrated that the student often has “very quick and intense emotional responses”, appears to be “considerably stressed”, and has a “very intense presentation for the relatively low level of triggers [which] seem to be a mismatch with his desire to interact.” The school psychologist noted that it did not appear that the student had learned appropriate social engagement skills at that time, and the data “[speaks] to autism criteria, and mood dysregulation.” A “BCPS Parent Resources & Support” page was sent home with the team notes.

The IEP team determined that the student met the criteria for multiple disabilities: Speech-Language Impairment (SLI), Other Health Impairment-ADHD, and Autism “given the complexity of his behaviors.”

The student’s family shared concerns that the student was now hitting himself and that some of his new behaviors were due to other classmates. The school-based team shared that there were 21 students in the student’s class, some of whom engaged in inappropriate behaviors.

The student’s classroom teacher reported that his handwriting had become more legible. The occupational therapist confirmed that the student’s letter formation and handwriting had improved, and the student was utilizing a “sensory choice board” to assist with the completion of “heavy work activities”. It was also suggested that a weighted vest may be a good strategy to address the student’s sensory needs, and the family gave permission to move forward with that suggestion.

The school counselor reported that the student had “difficulty regulating his volume when speaking,” “making loud noises, screaming and pounding on his desk,” and maintaining personal space during the classroom observation, but the calming prompts and strategies did not help the student calm down or change his behavior. It was also reported that the student seemed to struggle with transitions.

The PWN reflects the team would review the FBA and Behavior Intervention Plan (BIP) at the February 11, 2024, IEP team meeting along with the updated draft of the IEP for the annual review.

13. The progress report for the student’s IEP goals dated January 19, 2023¹, is as follows:
 - Social awareness - newly introduced skill, progress not measurable at this time;
 - Self-management - newly introduced skill, progress not measurable at this time.
14. On January 22, 2024, and January 25, 2024, the student received two disciplinary referrals for physical attacks on staff members.
15. The January 23, 2024, progress reported toward the achievement of the student’s visual motor goal reflects the student was not making sufficient progress to meet the goal. The data reflects “[The student] began receiving services on December 13th 2023, therefore, there has not been a full quarter of data collection. However, [the student] has still demonstrated progress in his visual motor skills...”

¹ The “Description of Progress” for the social awareness and self-management goals reflects: “This goal was added to [the student’s] IEP on 12/11/2023. Due to winter break, absences, and suspensions, [the student] has only participated in 2 social work sessions...” Based upon this information, MSDE presumes the date January 19, 2023, is a clerical error and the progress reported for the social awareness and self-management goals is actually for January 19, 2024.

16. The student's January 24, 2024, BIP is based on the student's December 15, 2023, FBA. The two behaviors addressed in the BIP are:
1. Physical disruption aggression - "Pushing, poking, hitting, kicking, lunging at others, pushing into others/hard hugging, etc."
 - The summary statement for this behavior in the BIP states:
 - "During whole class independent work time and/or workstations, when presented with a non-preferred task demand, or during whole class less-structured times (e.g., morning/dismissal transitions), [the student] will engage in acts of physical disruption/aggression such as pushing, poking hitting, kicking, lunging at others, pushing into others/hard hugging, etc. [The student's] sensory dysregulation along with concomitant ADHD and ASD symptomatology likely contribute to the behaviors."
 - The functional replacement behavior provided by the BIP states:
 - "To address the function of gaining attention, the student will: ask for help or ask to talk to preferred staff and will use social skills appropriate to the classroom environment to gain peer attention. To address the function of avoiding demands the student will: appropriately request a break.
 - The target level for behavior required by the BIP is:
 - [The student] will decrease the average daily frequency of physical disruption/aggression (Pushing, poking, hitting, kicking, lunging at others, pushing into others/hard hugging, etc.) by at least 50% from the baseline frequency (baseline:8.8; target: 4.4).
 - Proactive strategies to prevent the occurrence of the behavior include:
 - A social story regarding appropriate ways to gain staff and student attention to be read to the student each morning.
 - Provision of high-frequency non-contingent attention in the form of positive/encouraging comments, proximity, asking questions, and check-ins to monitor the student's understanding of tasks.
 - Access to the calming corner within the classroom
 - Scheduled sensory breaks
 - A break pass to be used once per hour.
 2. Verbal disruption - Yelling, calling out, loud crying/arguing, yelling oppositional comments (e.g. "No! It's not time to _")
 - The summary statement for this behavior in the BIP states:
 - During whole class independent work time and/or workstations, when presented with a non-preferred task demand or when denied a request for preferred objects/activities, [the student] will engage in acts of verbal disruptions such as yelling, calling out, loud crying/arguing, yelling oppositional comments (e.g., "No! It's not time to _"). [The student's] sensory dysregulation along with concomitant ADHD and ASD symptomatology likely contribute to the behaviors.
 - The functional replacement behavior provided by the BIP states:
 - To address the function of gaining attention, the student will: ask for help or ask to talk to preferred staff and will use social skills appropriate to the classroom environment to gain peer attention.

- To address the function of gaining object/activity, the student will: accept 'first-then' redirection; pre-choose, and attain preferred objects/activities as earned through contingency rewards/
- To address the function of avoiding demands, the student will: appropriately request a break.
- The target level for behavior required by the BIP is:
 - "[The student] will decrease the average daily frequency of verbal disruption (Yelling, calling out, loud crying/arguing, yelling oppositional comments) by at least 20% from the baseline frequency (baseline: 14; target: 11.2)
- Proactive strategies to prevent the occurrence of the behavior include:
 - Social story regarding appropriate ways to gain staff and student attention to be read to the student each morning.
 - Provision of high-frequency non-contingent attention in the form of positive/encouraging comments, proximity, asking questions, and check-ins to monitor the student's understanding of tasks.
 - Involve the student in developing his contingency reward menu.
 - Continuous access to the calming corner within the classroom.
 - A break pass to be used once per hour.
- Contributing factors to the student's behaviors include:
 - Medical condition - behavioral dysregulation/executive dysfunction, impulsivity, hyperactivity associated with ADHD and sensory dysregulation; ASD symptomatology.
- The BIP also provides:
 - Skill development on how the staff will teach the student the skill;
 - How the student will be rewarded for demonstrating the replacement/desired behaviors;
 - What the staff will do if the behaviors of concern occur again;
 - An urgent response plan; and
 - Staff development.

17. The February 5, 2024, progress reported towards the achievement of the student's communication goal, reflects that the student achieved his communication goal. The data reflects "While [the student] does not love to use his device and requires prompting to utilize it throughout his day, during sessions he uses it with minimal cueing with greater than 90% accuracy. He typically will say he can't find something quickly because he is uninterested but demonstrates the ability to locate his message on the device or spell it out if he cannot find what he is looking for. Most of his productions via the device are paraphrases of what he is trying to say but are effective in getting his message across. It does take him some time to locate and convey his message, which I believe deters him from using it; however, with consistent practice, this would likely improve and his ability to convey messages would quicken." There is no progress reported towards the achievement of any other goal on this date.

18. On February 7, 2024, the IEP team convened to conduct the student's annual review and discuss the results of assessment reports and Extended School Year (ESY) services. The PWN generated after the meeting reflects the team reviewed the FBA and BIP and reviewed the student's progress on IEP goals. The parent reported his behavior has improved at home, but his recent suspensions were "a low point." The classroom teacher reported his behaviors have been inconsistent at school, but when he is motivated he is able to complete grade-level assignments. The student is still encountering difficulty with physical and verbal aggression.

The IEP team updated the PLAAFP to include data from the psychological assessment, FBA, and BIP; and updated special considerations and accommodations to reflect that the student can verbally communicate and has access to his communication device. The student's IEP goals were updated, including his self-management goal, and his goal for using his communication device was modified.

The parent's advocate shared that the student's speech concerns had not been addressed. The SLP reported that while the student has speech irregularities, he has "unaddressed structural issues that are currently causing his articulation difficulties." The SLP reported the student had achieved his communication goal concerning using his communication device to repair communication breakdowns.

The IEP team added ASD as a contributing factor in the student's BIP. The educational consultant requested that communication should also be added as a contributing factor in the student's BIP. The school-based team disagreed with the educational consultant and reported that communication was not impacting the student's behavior because the student could communicate his wants and needs and be understood by peers and adults without the device. It was also reported that the student has shown that he can use the device in therapy sessions. The school-based team reported the student's social goals were addressing his communication skills, and the device slows the student's communication down when he is able to communicate verbally. The school-based team suggested the student's speech services should occur inside general education to support the student's use of the device in the general education setting.

The IEP team agreed to change speech-language services to two 15-minute sessions per week; OT services would be one 20-minute session per week, and social work would be one 30-minute session per week.

The IEP team also determined that the student would only be "guided" to the time-out area if the student was "being unsafe and refused to follow the directive of the teacher." The team also agreed to change the phrasing of the time-out area to "reset location."

The IEP team added "other school personnel" to the supplementary aids and services to include "all people who work with [the student] throughout the day."

The IEP team changed the social worker consult from monthly to weekly to allow social skills instruction in the classroom setting.

The IEP team determined that the student met the criteria for ESY.

The student's LRE was determined to be inside general education for 80% or more of the school day. The educational consultant disagreed and stated that the student should be in a more restrictive environment in a regional program because his current placement is too stimulating. The school-based team shared that the student is in the least restrictive environment in his home school, and his updated IEP and new BIP will have additional supports that have not been implemented and should be prior to considering a more restrictive placement for the student.

19. The February 7, 2024, IEP reflects the student's primary disability as Multiple Disabilities with speech-language articulation, self-management, social/emotional/behavior, visual motor, and sensory processing strategies as areas affected by the disability.
 - The PLAAFP reflected that the student was performing on the same instructional levels.
 - The Instructional and Assessment Accessibility Features and Accommodations required by the IEP continued, and restraint was not part of the IEP.
 - The Supplementary Aids, Services, Program Modifications, and Supports required by the IEP continued.
 - The student's goals were updated to reflect the new timeframe created by the updated IEP, and the communication goal was modified from 80% accuracy to 90% accuracy.
 - The special education services required by the IEP were updated to the following:
 - Speech-Language Pathology - two 15-minute sessions inside general education weekly;
 - Transportation;
 - Occupational Therapy - one 20-minute session outside general education weekly; and
 - Social Work Services - one 30-minute session outside general education weekly.
 - The LRE required by the IEP is inside general education for 80% or more of the school day.
20. On February 7, 2024, a "Request for Special Transportation Services" was submitted to request transportation services for the student from February 7, 2024, through February 7, 2025. The request also states "[The student] requires an additional adult while on the bus to support with behaviors (i.e. staying in his seat, keeping his hands to self)". The request included specialized equipment of "a lap belt to stay in his seat for safety."
21. The student's disciplinary report reflects the student received six behavior referrals between February 26, 2024, and March 18, 2024, for two physical attacks on staff members, disruptive behavior, and refusing to cooperate.
22. On March 22, 2024, the IEP team convened to review and revise the student's IEP. The PWN generated after the meeting reflects the IEP team considered updating the student's transportation equipment to provide more security.

The PWN reflects the student was exhibiting unsafe behaviors on the bus such as "climbing, jumping, and trying to open the back emergency door while the bus is in motion." The BCPS transportation staff recommended that the student use a "journey vest and a lock for the lap belt" when riding the bus. The family rejected this suggestion. The team agreed to a lock on the lap belt,

and it was stated the consideration of the journey vest would be revisited if there were continued issues. The transportation team would look into a possible route change to determine if there is a way to reduce the student's time on the bus. The family shared they have concerns about the student's interactions with the bus driver, and the transportation team stated that concern would be addressed with the bus driver.

The educational consultant requested reimbursement for transportation. The school-based team stated the student had not been removed from the bus, and the family was told that if they chose to transport the student to school it was not due to a request from the school but would be a family choice.

23. On April 3, 2024, and April 23, 2024, the student received two disciplinary referrals, for disruption and physical attack on a staff member.
24. On May 2, 2024, the student was restrained while at school. The "Restraint Form" dated May 2, 2024, reflects the alternate efforts made to de-escalate the situation and prevent behaviors including:
 - Redirection;
 - Verbal intervention & de-escalation techniques;
 - Provided choices;
 - Proximity control
 - BIP strategies;
 - Reminder of rules
 - Request for assistance;
 - Protective strategies/interventions.
 - A description of what staff did to avoid restraint includes:
 - "Verbal redirection while providing choices and maintaining space between [the student] and other students he was attempting to strike. Reminder of rules and called for assistance."
 - The precipitating event to the behavior is listed as:
 - Denied access to item, person, or location
 - Environmental stimuli
 - Unstructured time
 - The behavior that prompted the use of restraint states:
 - [The student] was repeatedly hitting and kicking people seated at the cafeteria table. When asked to move over to give personal space, [the student] increased his hitting and kicking of adults around him. He was attempting to lunge at other students to strike them."
 - The restraint start time is listed as 12:45 pm, and the restraint end time is listed as 12:46 pm. The restraint duration is listed as 1 minute.
 - The student's behavior and reaction during restraint include:
 - Attempts to injure others
 - Continuous resistance
 - Crying
 - profanity/cursing
 - yelling/screaming

- Team members who observed, implemented, or monitored the restraint included:
 - Social Emotional Teacher - implemented
 - Assistant principal - observed
 - Additional assistant - monitored
- The restraint form reflects that the student was evaluated by the nurse and no injuries were observed.
- The restraint form states the observing administrator called the student's family at 3:20 pm and 4:15 pm and spoke with the student's grandmother in person at 4:45 pm on the same day of the incident.
- The summary of next steps reflects that an IEP team meeting was scheduled for May 3, 2024.

25. On May 3, 2024, the IEP team convened to review and/or revise the student's IEP. The PWN reflects the team discussed the May 2, 2024, restraint of the student due to physically attacking staff members, attempting to strike students while kicking, crying out, and screaming profanities. The school-based team reported that verbal redirection and reminders of rules did not work and assistance was requested. The "hold was about one minute", and after the restraint, the student continued to "hit, and kick, and yell profanities." The IEP team proposed to review the IEP and BIP to determine if changes should be made to address the student's current behaviors.

The family did not agree to add restraint to the student's IEP and did not provide consent. The school-based team reported that school personnel are trained in CPI and provided the family information about where to research this process on the internet.

The student's classroom teacher reported the student is learning and is demonstrating no academic concerns, although his area of weakness, encoding, is not atypical of first graders. The PWN reflects that the student's grandmother expressed concerns that the student was not receiving "consistently demonstrates" on his report card, and the school-based team reported that "progressing" means meeting grade-level expectations. The teacher also reported that an "NS" is reflective of the student not completing work, not his ability to do the work. The educational consulted requested the PWN reflect the family and advocate do not believe the student is making academic progress.

The school-based team agreed to provide more details regarding the student's schedules and behavioral incidents to the home-school communication. This information will include the amount of time the student is out of the classroom as a result of his behaviors. The team discussed the incident when the student "took the teacher's walkie-talkie and started telling everyone to evacuate the building because he learned it from a fire drill practiced in school the week prior." The student's grandmother reported she feels the student is becoming more violent and aggressive and does not understand the consequences of his actions.

The school-based team reported the weighted vest seemed to be assisting the student with staying on task for longer periods. The occupational therapist stated that the weight of the vest might need to be increased.

The IEP team agreed to add the following to the student's supplementary aids and services:

- Opportunities to show mastery in alternate formats;
- Frequent check-ins (that will occur once an hour and faded based on the student's needs) to identify mood/feelings from a visual feeling menu, including a prompt to identify any potion mood triggers;
- Incorporate the "trial of vest" within the school day based on a specific wearing schedule; and
- Add "individual support" to the description of additional adult support.

The IEP team agreed to increase the student's service hours outside of the general education setting to provide daily social/emotional/behavioral skills instruction. The school-based team stated the student's services were being increased and "data will be collected to determine if additional outside [hours] are supported by the data." The PWN reflects the educational consultant's disagreement.

The school-based team rejected placing the student in a small group setting for the duration of the school day because the student was making academic progress in the general education classroom. The school-based team reported the student is working "at the expected 1st grade level and is making progress." The student's family did not agree that the student was making progress. The educational consultant disagreed that the student did not need a small group setting all day because the social worker stated the student works well in a one-to-one environment during social work sessions. The school-based team reported that most students do well working in such an environment, but that did not provide sufficient data to support changing the student's instructional setting.

The family shared that they were thinking of beginning ABA therapy, and the student has an appointment with his neuropsychologist to discuss their behavior concerns.

26. The May 3, 2024, IEP lists the student's primary disability as Multiple Disabilities.

- The PLAAFP information included in the IEP remained the same.
 - The Special Considerations and Accommodations provided by the IEP remained the same with the addition of the following supplementary aids, services, program modifications, and supports:
 - Differentiated assessments, daily;
 - Provide frequent changes in activity or opportunities for movement, daily; and
 - Strategies to initiate and sustain attention, daily.
 - The IEP requires the following special education services:
 - Classroom instruction - one 30-minute session daily outside general education "to provide direct instruction of social skills training outside the general education classroom..."
 - Classroom instruction - one 30-minute session daily inside general education "to reinforce the social skills instruction inside the general education classroom..."

- Speech/Language Services - two 15-minute sessions weekly inside general education;
 - Transportation
 - Occupational Therapy - one 20-minute session weekly outside general education; and
 - Social Work Services - one 30-minute session weekly outside general education.
- The LRE is not selected, but documentation reflects: “Combination of general education with supports and outside general education to address his OT and social work goals.”
27. The progress report for the student’s IEP goals dated April 5, 2024, is as follows:
- Social awareness - making sufficient progress to meet the goal;
 - Self-management - making sufficient progress to meet the goal;
 - Communication - making sufficient progress to meet the goal; and
 - Visual motor - making sufficient progress to meet the goal.
28. The student’s disciplinary report reflects the student was suspended from school five times during the 2023-2024 school year for a total of 10 days:
- January 22, 2024 - Physical attack of teacher
 - January 25, 2024 -Physical attack of students and teacher
 - March 8, 2024 - Gun threat made with fingers
 - Elopement
 - Physical attack on adults
 - Profanity
 - Screaming
 - Threat to students
 - Destruction of Property
 - April 3, 2024 - Physical harassment of student
 - Profanity
 - Screaming
 - Threats of physical harm to teacher and others
 - Physical attack of teacher
 - April 23, 2024 - Physical attack of teacher
 - The disciplinary report reflects the student was restrained on May 3, 2024, and there is no disciplinary action provided.
29. The progress report for the student’s IEP goals dated June 14, 2024, is as follows:
- Social awareness - making sufficient progress to meet the goal;
 - Self-management - making sufficient progress to meet the goal;
 - Communication - making sufficient progress to meet the goal; and
 - Visual motor - making sufficient progress to meet the goal.
30. There is documentation that the student was provided with the communication device and services required by the IEP since September 2023.

31. There is no documentation that the student was suspended from transportation during the 2023-2024 school year.
32. There is documentation that the student received two of the 24 social worker services required by the IEP from December 11, 2024, to May 15, 2024.

CONCLUSIONS:

ALLEGATION #1 PROVISION OF COMMUNICATION DEVICE AND TRANSPORTATION

Communication Device

Based on the Findings of Fact #1, #3, #4, #10, #15, #17 to #19, #27, #29, and #30, MSDE finds that the BCPS has ensured that the student was consistently provided with the communication device and services required by the IEP since September 2023, in accordance with 34 CFR §§ 300.101 and.323. Therefore, this office finds that a violation did not occur concerning the allegation.

Transportation Services

Based on the Findings of Fact #6, #7, #20, #22, #26, and #32, MSDE finds that the BCPS has ensured that the student was consistently provided with the transportation services required by the since September 2023, in accordance with 34 CFR §§ 300.101 and.323. Therefore, this office finds that a violation did not occur concerning the allegation.

ALLEGATION #2 ADDRESSING THE LACK OF PROGRESS TOWARD IEP GOALS

The student made expected progress during the 2023-2024 school year with the exception of the January 23, 2024, progress reported for the visual motor IEP goal, however, the IEP team reconvened shortly thereafter on February 7, 2024.

Based on the Findings of Fact #4, #5, #10, #13, #15, #27, and #29, MSDE finds that MSDE finds that the BCPS did ensure that the IEP team reviewed and revised, as appropriate, the student's IEP to address the lack of expected progress toward achieving his IEP goals during the 2023-2024 school year, in accordance with 34 CFR §§300.101 and 324. Therefore, this office finds that no violation occurred concerning the allegation.

ALLEGATION #3 DISCIPLINARY PROCEDURES

Based on the Findings of Fact #1 to #4, #6 to #12, #14, #16, #18, #19, #21 to #26, and #28, MSDE finds that the student was not disciplinarily removed for more than 10 days during the 2023-2024 school year. Therefore, the IDEA disciplinary protections were not triggered requiring BCPS to follow disciplinary procedures, in accordance with 34 CFR §300.530. Therefore, this office finds that no violation occurred concerning the allegation.

ADDITIONAL VIOLATIONS DISCOVERED DURING THE COURSE OF INVESTIGATION

Provision of Social Work Services

Based on the Findings of Fact #9, #10, #18, #19, #26, and #32, MSDE finds that the BCPS has not ensured that the student was consistently provided with the social work services required by the IEP since December 2023, in accordance with 34 CFR §§ 300.101 and .323. Therefore, this office finds that a violation occurred.

CORRECTIVE ACTIONS and 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.² 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. Alison Barmat, Branch Chief, Family Support and Dispute Resolution Branch, MSDE, to ensure the effective implementation of the action. Ms. Barmat can be reached at (410) 767-7770 or by email at alison.barmat@maryland.gov.

Student-Specific

By October 1, 2024, MSDE requires the BCPS to provide documentation that the school system has:

- The IEP team has convened and determined the amount and nature of compensatory services or other remedy to redress the failure to provide social work services and developed a plan for the provision of those services within one year of the date of this Letter of Findings.

² 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.

School-Based

By October 1, 2024, MSDE requires BCPS to provide documentation that it has provided professional development on ensuring the provision of related services required by the IEP to the staff at [REDACTED].

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 and Special Education Services

ALH/ebh

c: Dr. Myriam Rogers, Superintendent, BCPS
Allison Myers, Executive Director, Department of Special Education, BCPS
Charlene Harris, Supervisor of Compliance in the Department of Special Education, BCPS
Jason Miller, Coordinator, Special Education Compliance, BCPS
[REDACTED], Principal, [REDACTED], BCPS
Dr. Paige Bradford, Section Chief, Performance Support and Technical Assistance, MSDE
Alison Barmat, Branch Chief, Family Support and Dispute Resolution, MSDE
Nicol Elliott, Section Chief, Monitoring and Accountability, MSDE
Tracy Givens, Section Chief, Dispute Resolution, MSDE
Elizabeth B. Hendricks, Complaint Investigator, MSDE