


January 30, 2025




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

Re: 
Reference: #25-135

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 on the final results of the investigation.

ALLEGATIONS:

On November 14, 2024, MSDE received a complaint from , hereafter, “the complainant,” on behalf of the above-referenced student. In that correspondence, the complainant alleged that the Montgomery County Public School (MCPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) and related requirements concerning the above-referenced student.

MSDE investigated the following allegations:

1. The MCPS did not follow proper procedures when disciplinarily removing the student from school since November 16, 2023, in accordance with 34 CFR §§ 300.530 – 300.536, COMAR 13A.08.03, and COMAR 13A.05.01.10.
2. The MCPS has not ensured that the student is being provided with the special education classroom instruction, related services, and one-to-one required by the Individualized Education Program (IEP), since November 16, 2023, in accordance with 34 CFR §§ 300.101 and .323.
3. The MCPS did not ensure that the Behavior Intervention Plan (BIP) was consistently implemented since November 16, 2023, in accordance with 34 CFR §§ 300.101 and 323.
4. The MCPS did not follow proper procedures when using physical restraint since November 16, 2023, in accordance with COMAR 13A.08.04.05.

BACKGROUND:

The student is 12 years old and is a student with Autism under the IDEA. He attends [REDACTED] and has an IEP that requires the provision of special education.

ALLEGATION #1

DISCIPLINARY REMOVAL

FINDINGS OF FACT:

1. On May 24, 2024, the student's schedule was changed to a partial-day schedule:
 - May 28, 2024, and May 29, 2024, the student will attend from 9:30 am-10:30 am
 - May 30, 2024, and May 31, 2024, the student will attend from 9:30 am-11:00 am
 - June 3, 2024, and June 4, 2024, the student will attend from 9:30 am-11:30 am
 - June 5, 2024, and June 6, 2024, the student will attend from 9:30 am-12:00 pm
 - June 7, 2024, and June 10, 2024, the student will attend from 9:30 am-12:50 pm
 - June 11, 2024, the student will attend from 9:30 am-2 pm
 - June 12, 2024, the student will attend for a full day.

There is no documentation that the IEP team convened to determine that that student required a modified schedule.

2. On September 9, 2024, the MCPS school-based team, emailed the complaint informing her of the adjusted schedule:
 - On September 9, 2024, and September 16, 2024, the student will attend from 8:20 am to 9:20 am;
 - On September 10, September 11, September 17, 2024, and September 18, 2024, the student will attend from 8:20 am to 9:25 am;
 - On September 12, 2024, September 13, 2024, September 19, 2024, and September 20, 2024, the student will attend from 8:20 am to 9:45am.

There is no documentation that the IEP team convened to determine that the student required a modified schedule.

3. There is documentation that school-based staff communicated with the parent to pick the student up from school prior to the end of the school day¹ during the 2024-2025 school year, due to behavioral concerns.
4. There is documentation that the student was disciplinarily removed from school for two days on September 20, 2024.

DISCUSSION AND CONCLUSIONS:

The IDEA and COMAR provide protection to students with disabilities who are removed from school in excess of ten school days in a school year. A student with a disability may be removed from the student's current placement for up to ten consecutive school days for each incident of misconduct in a school year if the

¹ The documentation reflects the parent was informed to pick the student up from school as early as 9am. The bell schedule reflects first period, begins at 8:15am.

cumulative effect of the removals does not constitute a change in placement (34 CFR § 300.530). A change in placement occurs if the removal is for more than ten consecutive school days or the student has been subjected to a series of removals that constitute a pattern because they total more than ten school days in a school year and the student's behavior is substantially similar to the behavior in previous incidents that resulted in the removals (34 CFR §§ 300.530 and .536).

For each period of removal after a student has been removed for the cumulative equivalent of ten school days in a school year, school personnel must consult with at least one of the student's teachers to determine the services to be provided to the student to enable her to appropriately progress in the general curriculum and to advance toward achieving the annual IEP goals. Additionally, the IEP team must meet within ten business days of the removal to develop an assessment plan if the team has not conducted a functional behavioral assessment and implemented a behavioral intervention plan to address the behavior that resulted in the student's removal. If the student has a behavior intervention plan, the IEP team must meet within 10 business days to review the plan to determine whether the plan needs to be modified to address the behavior resulting in the removal. (34 CFR § 300.530 and COMAR 13A.08.03.03).

In this case, the change in student's schedule to a partial day constituted a disciplinary removal. The change in schedule was not the result of an IEP team decision in order to provide the student with a free and appropriate public education. The series of removals constituted a change in placement triggering disciplinary protections under the IDEA.

Based on the Findings of Fact #1, MSDE finds that the change of the student's schedule to a partial day schedule constituted a disciplinary removal. MCPS did not follow proper procedures when disciplinarily removing the student from school from May 24, 2024, to June 11, 2024, in accordance with 34 CFR §§ 300.530 – 300.536, COMAR 13A.08.03, and COMAR 13A.05.01.10. Therefore, this office finds that a violation did occur concerning this aspect of the allegation.

Based on the Findings of Fact #2 through #4, MSDE finds that the change of the student's schedule to a partial day schedule constituted a disciplinary removal. MCPS did not follow proper procedures when disciplinarily removing the student from school since September 2024, in accordance with 34 CFR §§ 300.530 – 300.536, COMAR 13A.08.03, and COMAR 13A.05.01.10. Therefore, this office finds that a violation did occur concerning this aspect of the allegation.

ALLEGATION #2	PROVISION OF SPECIAL EDUCATION CLASSROOM INSTRUCTION, RELATED SERVICES, AND ONE-TO-ONE
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FINDINGS OF FACT:

5. The IEP in effect on November 16, 2023, was developed on June 12, 2023. The IEP reflects student needs in Math Calculation, Math Problem Solving, Reading Comprehension, Reading Phonics, Speech and Language Articulation, Speech and Language Expressive Language, Speech and Language Pragmatics, Speech and Language Receptive Language, Written Language Expression, Written Language Mechanics, Attention/Engagement, Self-management, and Social Interaction Skills.

The IEP requires 26 hours and 25 minutes per week of special education instruction outside the general education setting to be provided by the special education teacher, and/or instructional assistant. The IEP requires 5 hours and 50 minutes per week of special education instruction inside the general education setting to be provided by the special education teacher, general education teacher and/or instructional assistant.

The IEP requires 3- 30-minute sessions per week of speech-language as a related service outside of the general education setting. The IEP required transportation as a related service.

The IEP requires daily adult support and adult proximity as supplementary aids and services.

6. The IEP developed on June 11, 2024, reflects the following areas are impacted by the disability: Math Calculation, Math Problem Solving, Reading Comprehension, Reading Phonics, Speech and Language Articulation, Speech and Language Expressive Language, Speech and Language Pragmatics, Speech and Language Receptive Language, Written Language Expression, Written Language Mechanics, Attention/Engagement, Self-management, and Social Interaction Skills.

The IEP requires 27 hours and 55 minutes per week of special education instruction outside the general education setting to be provided by the IEP team, special education teacher, general education teacher, and/or instructional assistant. The IEP requires 2 hours and 15 minutes per day of special education instruction outside the general education setting to be provided by the IEP team, special education teacher, general education teacher, and/or instructional assistant.

The IEP requires three hours per week of special education instruction inside the general education setting to be provided by the general education teacher, IEP team, special education teacher, general education teacher, and/or instructional assistant. The IEP requires 2 hours and 15 minutes per day of special education instruction inside the general education setting to be provided by the general education teacher, the IEP team, the special education teacher, the general education teacher, and/or instructional assistant.

The IEP requires six 45-minute sessions per month of speech-language as a related service outside of the general education setting. The IEP requires transportation as a related service.

The IEP requires daily adult support “from arrival through dismissal” as supplementary aid and service.

The IEP reflects the functional behavior assessment (FBA) was completed on May 12, 2023, and a behavior intervention plan (BIP) was developed on May 9, 2024.

7. There is no documentation of the provision of special education instruction, transportation service, and adult support as required by the IEP since November 16, 2023.
8. Although there is some documentation that the student has been provided with speech-language services, the documentation does not reflect that the student was consistently provided with speech-language services, as required by the IEP since November 16, 2023.²

² The speech-language log reflects the student was absent because of “partial day schedule” on multiple days.

CONCLUSIONS:

Provision of Special Education Instruction, Transportation, and Adult Support

Based on the Findings of Fact #1, and #3 through #5, MSDE finds that the MCPS has not ensured that the student has been consistently provided with the special education instruction required by the IEP since November 16, 2023, in accordance with 34 CFR §§ 300.101 and .323. Therefore, this office finds that a violation has occurred concerning this allegation.

Provision of Speech-Language

Based on the Findings of Fact #1, #3, #5, and #6, MSDE finds that the MCPS has not ensured that the student has been consistently provided with the speech-language services, required by the IEP since November 16, 2023, in accordance with 34 CFR §§ 300.101 and .323. Therefore, this office finds that a violation has occurred concerning this allegation.

ALLEGATION #3

BEHAVIOR INTERVENTION PLAN (BIP)

FINDINGS OF FACT:

9. The BIP in effect at the beginning of the 2024-2025 school year was developed on May 9, 2024. The BIP identifies three target behaviors:
 - Target Behavior: Verbal refusals/arguments. Operational Definition: When seeking to escape from or avoid a non-preferred location or task demand, Joseph can engage in verbal refusals and will argue with staff and peers.
 - Target Behavior: Screaming at a very high volume or making other very loud noises. Operational Definition: When seeking to escape from or avoid a non-preferred location or task demand, [Student] can engage in highly disruptive levels of screaming or other loud noises. This behavior's duration can last minutes per instance.
 - Target Behavior: Physical Aggression, including hitting and grabbing of staff and peers. Operational Definition: When seeking to escape from or avoid a non-preferred location or task demand, [Student] can engage in physically aggressive behavior towards others that includes hitting, slapping, and grabbing of the body or clothes.

The BIP reflects the choice of data collection is frequency. The BIP further reflects that the frequency data should have a clear start and a clear end.

10. There is no documentation that the BIP was implemented as required by the IEP since November 16, 2023.

CONCLUSION:

Based on the Findings of Fact #1, #3, #4, #7 and #8, MSDE finds that the MCPS has not ensured that the BIP, has been consistently implemented, as required by the IEP since November 16, 2023, in accordance with 34 CFR §§ 300.101 and .323. Therefore, this office finds that a violation has occurred concerning this allegation.

ALLEGATION #4

USE OF PHYSICAL RESTRAINT

FINDING OF FACT:

11. On April 29, 2024, the student was restrained. The restraint report reflects that while transitioning to recess, the student refused to go outside and continued to walk in the hallway. The staff provided the student with a choice of recess or returning to the classroom. At that point, the student became aggressive towards the adults in the vicinity. The aggressive behaviors included grabbing, hitting,

biting, kicking, hair pulling, licking, and ripping the clothing of the adults. The staff provided alternative efforts to deescalate the student, including ignoring, and redirection, offered a movement break, and staff utilized body positioning for proximity control.

The report further reflects that the student was placed in a standing-hold restraint. The restraint was less than one minute.

The incident report further reflects:

- The total time and type of restraint;
- The student's behavior and reaction during the restraint;
- The name, role, and signature of staff who observed, implemented, or monitored the restraint; and
- The name of the staff who completed the parent notification. The parent notification occurred in person.

12. On May 6, 2024, the student was restrained. The restraint report reflects that while transitioning to recess, the student refused to go outside and continued to walk in the hallway. The staff provided the student with a choice of recess or returning to the classroom. At that point, the student became aggressive towards the adults in the vicinity. The aggressive behaviors included grabbing, hitting, biting, kicking, hair pulling, licking, and ripping the clothing of the adults. The staff provided alternative efforts to deescalate the student, including ignoring, and redirection, offered a movement break, and staff utilized body positioning for proximity control.

The report further reflects that the student was placed in standing and then seated hold restraint. The restraint lasted six minutes.

The incident report further reflects:

- total time and type of restraint;
- student behavior and reaction during the restraint;
- the name, role, and signature of staff who observed, implemented, or monitored the restraint; and
- the name and signature of the administrator, evaluation by the school nurse, and parent notification in person.

13. There is documentation that the staff members who monitored and implemented the physical restraint were trained and certified in the appropriate use of physical restraint.

DISCUSSION AND CONCLUSION:

Physical restraint means a personal restriction that immobilizes a student or reduces the ability of a student to move their torso, arms, legs, or head freely. Physical restraint does not include:

- (i) Briefly holding a student in order to calm or comfort the student;
- (ii) Holding a student's hand or arm to escort the student safely from one area to another;
- (iii) Moving a disruptive student who is unwilling to leave the area when other methods such as counseling have been unsuccessful; or
- (iv) Breaking up a fight in the school building or on school grounds in accordance with Education Article § 7-307, Annotated Code of Maryland. (COMAR 13A.08.04.02).

Use of Restraint

- (a) The use of physical restraint is prohibited in public agencies and nonpublic schools unless:
 - (i) Physical restraint is necessary to protect the student or another individual from imminent, serious physical harm; and
 - (ii) Other less intrusive, nonphysical interventions have failed or been demonstrated to be inappropriate for the student.
- (b) Physical restraint shall only be implemented and monitored by school personnel who are trained in the appropriate use of physical restraint consistent with Regulation .06C of COMAR 13A.08.04.
- (c) In applying physical restraint, school personnel shall only use reasonable force as is necessary to protect a student or other person from imminent, serious physical harm.
- (d) Physical restraint:
 - (i) Shall be removed as soon as the student no longer poses a threat of imminent, serious physical harm; and
 - (ii) May not exceed 30 minutes.
- (e) In applying physical restraint, school personnel may not:
 - (i) Place a student in a face down position;
 - (ii) Place a student in any other position that will obstruct a student's airway or otherwise impair a student's ability to breathe, obstruct school personnel's view of a student's face, restrict a student's ability to communicate distress, or place pressure on a student's head, neck, or torso; or
 - (iii) Straddle a student's torso." (COMAR 13A.08.04.05A)

Based on the Findings of Fact #11 through #13, MSDE finds that the MCPS followed proper procedures when using physical restraint on April 29, 2024, and May 6, 2024, in accordance with COMAR 13A.08.04.05. Therefore, this office finds that a violation did not occur concerning the allegation.

CORRECTIVE ACTIONS AND TIMELINES:

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

MSDE has established reasonable timeframes below to ensure that noncompliance is corrected in a timely manner.³This 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. Nicole Green, Compliance Specialist, Family Support and Dispute Resolution, MSDE, to ensure the effective implementation of the action.⁴ Ms. Green can be reached at (410) 767-7770 or by email at nicole.green@maryland.gov.

Student-Specific

MSDE requires the MCPS to provide documentation by March 14, 2025, that the IEP team has taken the following action:

- a. Reviewed the student's attendance record, and determine the number of days that the student was removed from school;
- b. Ensured that the student is receiving special education instruction, related services, and adult support as required by the IEP; and
- c. Ensured that the BIP is being implemented; and
- d. Provided the parent with documentation regarding the student's restraint.; and
- e. Determined compensatory services needed to remediate the violations identified in this investigation and developed a plan for the implementation of the services within one (1) year of the date of this Letter of Findings.

The MCPS must ensure that the parents are provided with written notice of the team's decisions. The parents maintain the right to request mediation or to file a due process complaint to resolve any disagreement with the team's decisions.

School-Based

MSDE requires the MCPS to provide documentation by May 15, 2025, of the steps it has taken to ensure that the [REDACTED] and [REDACTED] staff properly implements the requirements for the violations identified in this Letter of Findings under the IDEA. These steps must include staff development, as well as tools developed to document services and monitor compliance.

Monitoring must include a review of at least 10 randomly selected student records to review for the provision of special education instruction, supplementary aids, services, and implementation of the BIP. The monitoring report must be submitted to MSDE on or before May 15, 2025.

³ The United States Department of Education, Office of Special Education Programs (OSEP) states that the public agency correct noncompliance in a timely manner, which is as soon as possible, but not later than one (1) year from the date of identification of the noncompliance. The OSEP has indicated that, in some circumstances, providing the remedy could take more than one (1) year to complete. If noncompliance is not corrected in a timely manner, MSDE is required to provide technical assistance to the public agency, and take tiered enforcement action, involving progressive steps that could result in the redirecting, targeting, or withholding of funds, as appropriate.

⁴ MSDE will notify the public agency's Director of Special Education of any corrective action that has not been completed within the established timeframe.

Similarly Situated Students

MCPS must determine whether there are other students placed on a modified day schedule at [REDACTED] without proper documentation. If so, that information must be provided to MSDE prior to February 28, 2025. If it is determined that there are other similarly situated students, those MCPS must convene an IEP team to determine appropriate compensatory services prior to April 1, 2025. All compensatory services must be provided prior to August 31, 2026.

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 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 why the documentation was not made available during the investigation. The written request for reconsideration should be provided to Tracy Givens, Section Chief, Dispute Resolution via email at Tracy.Givens@maryland.gov. 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/ra

c: Dr. Thomas Taylor, Superintendent, MCPS
Dr. Peggy Pugh, Chief Academic Officer, MCPS
Diana K. Wyles, Associate Superintendent, Office of Special Education, MCPS
Gerald Loiacono, Supervisor, Resolution and Compliance Unit, MCPS
[REDACTED], Principal, [REDACTED], MCPS
[REDACTED], [REDACTED], MCPS
Dr. Paige Bradford, Section Chief, Performance Support and Technical Assistance, MSDE
Dr. Brian Morrison, Branch Chief, Policy and Accountability, MSDE
Alison Barmat, Branch Chief, Family Support and Dispute Resolution Branch, MSDE
Nicole Green, Compliance Specialist, MSDE
Tracy Givens, Section Chief, Dispute Resolution, MSDE
Rabiatu Akinlolu, Compliant Investigator, MSDE