

April 10, 2023



Ms. Allison Myers
Baltimore County Public Schools
Jefferson Building, 4th Floor
105 W Chesapeake Avenue
Towson, Maryland 21204

RE: [REDACTED]
Reference: #23-141

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 February 9, 2023, MSDE received a complaint from Ms. [REDACTED], hereafter, “the complainant,” on behalf of her son. In that correspondence, the complainant alleged that the Baltimore County Public Schools (BCPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to the above-referenced student.

MSDE investigated the following allegations:

1. The BCPS did not follow proper procedures when using physical restraint with the student from June 2022 to July 2022, in accordance with COMAR 13A.08.04.05.
2. The BCPS has not ensured that proper procedures were followed when determining the student’s educational placement since May 2022, in accordance with 34 CFR §§300.114 - .116, .321, and .324.

BACKGROUND:

The student is five years old and is identified as a student with Autism under the IDEA. At the start of the 2022-2023 school year, he attended [REDACTED] School’s half-day preschool program by the BCPS. He is currently parentally placed at [REDACTED] and [REDACTED]. The student has an Individualized Education Program (IEP) that requires the provision of special education instruction and related services.

FINDINGS OF FACTS:

ALLEGATION #1: UTILIZATION OF RESTRAINT

1. There is no documentation that the student was physically restrained from June 2022 to July 2022.

CONCLUSIONS:

Physical restraint means the use of physical force, without the use of any device or material, that restricts the free movement of all or a portion of a student's body. Physical restraint does not include holding a student's hand or arm to escort the student safely from one area to another or intervening in a fight (COMAR 13A.08.04.02).

Physical restraint and seclusion may only be used if the emergency situation involves the need to protect a student or other person from imminent, serious, physical harm (COMAR 13A.08.04.05).

In this complaint, the complainant alleges the student was inappropriately restrained upon drop off and was forcefully dragged or carried against his will in the front office in June 2022. However, based on Findings of Fact #1, MSDE finds that there is no documentation that supports the BCPS conducting a restraint on the student in June or July of 2022, in violation of COMAR 13A.08.04.05. Therefore, this office finds that a violation did not occur with respect to this allegation.

ALLEGATION #2: PLACEMENT DETERMINATION

2. On May 5, 2022, the IEP team met to discuss the results of assessment reports completed by the BCPS Infants and Toddlers Program on February 9, 2022. Following a review of the assessments and development of the student's IEP, the IEP team determined that the student would be placed in the half-day prekindergarten program at [REDACTED] School. The complainant shared her concerns that half-day programming at [REDACTED] School would not be the appropriate placement for the student and would not meet the student's needs. She further expressed her concerns that the student would not be safe at the school and would not receive one to one support, as he did in his last placements. The complainant and her advocate proposed that Applied Behavioral Analysis (ABA) services be included in the student's IEP as a related service, with a one to one ABA trained aide that is dedicated to the student. The IEP team agreed that additional information was needed prior to adding ABA services to the IEP and recommended that an observation be conducted by a BCPS Board Certified Behavior Analyst (BCBA) specialist at [REDACTED] where the student was currently parentally placed.
3. The student enrolled in [REDACTED] School on May 10, 2022. The IEP in effect at that time reflects that the student requires support in the areas of Social Foundations, Language and Literacy, Communication, and Fine Motor. It further requires that the student be provided with instruction delivered outside of the general education classroom in a separate class with a low student-teacher ratio. The IEP reflects the student requires classroom instruction outside of the general education classroom for two hours and fifteen minutes weekly, classroom instruction outside of the general education classroom for eight hours weekly, speech and language services outside of the general education classroom for one hour weekly, and occupational therapy outside of the general education classroom for one hour weekly. The student requires one to one adult support throughout the instructional day by staff that is trained in evidence-based instructional practices for students with Autism.
4. On June 25, 2022, the IEP team convened to review assessments, review and revise the IEP as appropriate, and discuss the student's progress. The IEP team reviewed observation reports completed for the student both at [REDACTED] School and in his private placement. Both observations were conducted by a BCPS BCBA Specialist. The school team also reviewed the student's overall educational progress and discussed the data supporting the student's progress while attending the [REDACTED] School for 22 days. The complainant expressed concern that the student is experiencing "heightened aggressions at home as a result of his current

placement,” and does not feel that the school is appropriate. The parent expressed concern that the student required 1:1 support per the IEP but was informed by the school staff the student would have undefined “additional support.” She also expressed concern that the data provided by the school was unreliable. The documentation from the meeting reflects the complainant stated she feels the student needs a full day, structured program with ABA to meet his needs, home/school communication, and requested that the student be placed in a more restrictive setting.

5. The IEP team did not agree that a more restrictive setting was appropriate at that time and recommended that a Functional Behavior Assessment (FBA) be completed for the student for the home, school and [REDACTED] settings, to help address the student’s behavior in all three settings. The complainant did not provide consent for the FBA and stated the student would not return to [REDACTED] School.
6. One August 22, 2022, the IEP team convened to discuss the student progress. The complainant shared information regarding the student’s experience throughout the summer while attending [REDACTED] School. The complainant stated the student regressed in his speech, eating, playing, was made to stop outside services due to lack of engagement and started having aggressive behaviors. The complainant also expressed that the student is back to “making progress” as he attends [REDACTED] and [REDACTED].
7. During the meeting on August 22, 2022, the complainant requested a new placement for the student. The IEP team declined to agree to a more restrictive setting as the behaviors described by the parent were not consistent with what was observed in the educational environment at [REDACTED] School. The school-based members of the team explained that the student does not require the level of services requested by the complainant and that data collected during the time in attendance reflects that the student made progress while in the academic environment and while receiving his related services. The school team feels the current placement is able to “sufficiently fill his needs.”
8. There is documentation the complainant believes the student’s goals are underestimating what he is able to do. The school-based IEP team members proposed to assess the student in the fall to get more data on the student’s abilities and update his IEP accordingly. The complainant did not provide consent.
9. The IEP team met on September 22, 2022, to review and revise the IEP, as appropriate. The complainant continued to disagree with the placement due to feeding needs, number of students in the classroom, need for a sensory room, and travel time. Documentation reflects that the complainant’s concerns were addressed. The school-based IEP team members explained that the “IEP is developed and implemented for the child to access and participate in grade level content and to make progress within the program on those norms or standards.” The team further explained that changes to the IEP require data to explain what is happening in the school building, and a connection between the behaviors seen at home to the behavior displayed in the educational setting.
10. On January 13, 2023, the IEP team convened to conduct the annual IEP review and revise the IEP, as appropriate. The complainant provided BCPS data from the private providers “a few days prior to the IEP meeting.” The IEP team proposed to reconvene within two weeks to consider the data provided by the complainant, complete the review of annual goals, services/supports, Least Restrictive Environment (LRE) and placement to conclude the annual review process.
11. On January 27, 2023, the IEP team reconvened and determined the need for additional assessments in order to determine the student’s current level of performance. The team agreed to conduct an

educational assessment, a psychological assessment and a classroom observation. The IEP team also requested to conduct a classroom observation at one of the student's current parentally placed placements. During the meeting, the IEP team proposed changes to the students speech and language goals using data collected from the services he receives at [REDACTED] and proposed toileting goals, but did not make changes to the student's services or LRE.

12. The written summary of the January 27, 2023, IEP team meeting reflects that the "IEP team determined that the student's needs can be met at his current placement and IEP services provided in a comprehensive school setting. This type of placement will ensure the student the Specially Designed Instruction (SDI) by appropriate staff in the LRE for him."
13. The IEP team determined once consent was provided to BCPS by the complainant to conduct additional assessments, the BCPS would work with the complainant and the student's service providers to schedule a classroom observation by BCPS staff. There is documentation the complainant signed the consent form on February 27, 2023.

CONCLUSION:

Based on the Findings of Facts #2 - #13, MSDE finds that the BCPS has ensured that proper procedures were followed when determining the student's educational placement since May 2022, in accordance with 34 CFR §§300.114 - .116, .321, .324. Therefore, this office does not find that a violation occurred with respect to the allegation.

TIMELINE:

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

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

Sincerely,

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

DMC/sj

c:	Darryl L. Williams	Jason Miller	Gerald Loiacono
	Charlene Harris	[REDACTED]	Diane Eisenstadt
	Conya Bailey	Alison Barmat	Stephanie James