


April 21, 2023




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

RE: 
Reference: #23-159

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 23, 2023, MSDE received a complaint from Ms. , hereafter, “the complainant,” on behalf of her son, 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 her son.

MSDE investigated the following allegations:

1. The BCPS has not developed and implemented an Individualized Education Program (IEP) and Behavior Intervention Plan (BIP) that addressed the student’s identified behavioral needs since the start of the 2022- 2023 school year, in accordance with 34 CFR §§300.101 and .324.
2. The BCPS has not followed proper procedures when disciplinarily removing the student from school on February 17, 2023, in accordance with 34 CFR §§300.530, COMAR 13A.08.02, COMAR 13A.08.03, COMAR 13A.08.01.11.
3. The BCPS has not followed proper procedures when using physical restraint with the student since the start of the 2022- 2023 school year, in accordance with COMAR 13A.08.04.05.

BACKGROUND:

The student is nine years old and is identified as a student with multiple disabilities under the IDEA. He attends  School and has an IEP that requires the provision of special education instruction and related services.

ALLEGATION #1: IEP & BIP THAT ADDRESSES STUDENT'S BEHAVIORAL NEEDS

FINDINGS OF FACTS:

1. The student's IEP, developed on December 16, 2021, reflects that "behavioral: social/emotional/behavioral" is an area that impacts the student's academic achievement and/or functional performance.
2. The student's IEP, developed on December 16, 2021, requires daily "social/behavior supports: strategies to initiate and sustain attention, provide frequent changes in activity or opportunities for movement, positive/concrete reinforcers, social skills training, advance preparation for schedule changes, and home school communication system." The IEP also requires that the student have daily adult support "to support his needs in all environments."
3. The student's IEP, developed on December 14, 2022, reflects that "behavioral: self-management (e.g., executive functioning, organization, attention, etc.)" is an area that impacts the student's academic achievement and/or functional performance. It further reflects that a Functional Behavior Assessment (FBA) was completed on December 12, 2019, and a BIP was developed on January 21, 2020. In addition, it reflects that written consent by the parent was given for the use of restraint as a part of the student's IEP and/or BIP on February 25, 2021.
4. The student's IEP, developed on December 14, 2022, requires daily "social/behavior supports: strategies to initiate and sustain attention, provide frequent changes in activity or opportunities for movement, use of positive/concrete reinforcers, social skills training, advanced preparation for schedule changes." In addition, it requires daily "physical/environmental supports: picture schedule and sensory strategies."
5. The student's IEP, developed on December 14, 2022, requires the student to have "an Additional Adult to support his needs in all environments."
6. The student's IEP, developed on December 14, 2022, reflects that the student has a goal in self-management. The progress report dated January 16, 2023, reflects that the student was making sufficient progress in meeting the goal.
7. The Prior Written Notice generated after the March 1, 2023, IEP team meeting reflects that the IEP team agreed to conduct an updated FBA, increase services hours outside of the general education setting, include a social-emotional goal, and added that the student will receive assistance from BPCS in regards to behavior support and the FBA/BIP process.
8. The student's IEP, developed on March 1, 2023, reflects that "behavioral: social/emotional/behavioral" is an area that impacts the student's academic achievement and/or functional performance. It further reflects that a "behavior chart was put into place which allowed the student to earn six minutes of free time at the end of every class period." In addition, it reflects that staff noted an increase in crisis behaviors by the student, including "eloping, throwing materials, pushing furniture, self-injurious behavior, and physically lashing out toward staff." It further reflects that an FBA was completed on December 12, 2019, and a BIP was implemented on January 21, 2020. In addition, it reflects that written consent by the parent was given for the use of restraint as a part of the student's IEP and/or BIP on February 25, 2021.
9. The student's IEP, developed on March 1, 2023, requires daily "social/behavior supports: strategies to initiate and sustain attention, provide frequent changes in activity or opportunities for movement, use of positive/concrete reinforcers, social skills training, advanced preparation for schedule

changes.” In addition, it requires daily “physical/ environmental supports: picture schedule and sensory strategies.”

10. The student’s IEP, developed on March 1, 2023, requires the student to be provided “an Additional Adult to support his needs in all environments.”
11. The student’s IEP, developed on March 1, 2023, reflects that the student has a goal in self-management and in social/emotional functioning.
12. The Prior Written Notice generated after the March 22, 2023, IEP team meeting reflects that the IEP team reviewed the student’s supports, abilities, and needs. In addition, they developed a plan for the student to return to school after a behavioral incident that took place on February 17, 2023. The IEP team discussed the use of restraints and a possible different school of attendance within BCPS. The IEP team also agreed to conduct an FBA.
13. The Notice for Consent for Assessment for the FBA was signed by the parent on March 29, 2023, and returned to the BCPS on March 30, 2023.
14. There is documentation that the student has consistently received daily “social/behavior supports: strategies to initiate and sustain attention, provide frequent changes in activity or opportunities for movement, use of positive/concrete reinforcers, social skills training, and advanced preparation for schedule changes.” In addition, the IEP requires daily “physical/environmental supports: picture schedule and sensory strategies” since the start of the 2022-2023 school year.
15. There is documentation that the student has consistently received daily adult support in all environments since the start of the 2022-2023 school year.
16. There is documentation that the student’s behavior chart, which was implemented on March 1, 2023, has consistently been utilized since March 1, 2023.
17. There is no documentation of the BPCS implementing or annually reviewing the BIP that was in effect for the student since January 21, 2020.

CONCLUSIONS:

IEP and BIP THAT ADDRESSES STUDENT’S BEHAVIORAL NEEDS

Based upon the Findings of Facts #1- #17, MSDE finds that while the BCPS has developed an IEP that addresses the student’s identified behavioral needs since the start of the 2022- 2023 school year and provided some of the supports required by the IEP, the BIP developed for the student, however, had not been reviewed and revised by the IEP team, or implemented since the start of the 2022-2023 school year, in accordance with 34 CFR §§300.101 and .324. Therefore, this office finds a violation occurred with respect to this aspect of allegation #1.

ALLEGATION #2:

DISCIPLINARY REMOVAL OF THE STUDENT

FINDINGS OF FACTS:

18. The Prior Written Notice generated after the March 1, 2023, IEP team meeting reflects that on “February 17, 2023, during crisis, a call was made to the parent to see if she could assist with helping to de-escalate the student. During the call, the school administrator used the opportunity to share options such as home and hospital and to discuss whether the current programming was effective

for the student’s needs. It further reflects that the crisis took place for thirty minutes, during which time the student was in an administrator’s office, where he “attempted to hit his head into a mirror” and was blocked from doing so by an administrator’s hand. The student was able to de-escalate and ride the school bus home.

19. There is no documentation that the student was disciplinarily removed from school on February 17, 2023.

CONCLUSION:

Based upon the Findings of Facts #18 and #19, MSDE finds that the BCPS did not disciplinarily remove the student from the school on February 17, 2023, and was not required to document the removal in accordance with 34 CFR §§300.530, COMAR 13A.08.02, COMAR 13A.08.03, COMAR 13A.08.01.11. Therefore, this office does not find a violation occurred with respect to allegation #2.

ALLEGATION #3: RESTRAINT OF THE STUDENT

FINDINGS OF FACTS:

20. The student’s IEP developed on March 1, 2023, reflects that the student was restrained one time on February 7, 2023, for the safety of the student and staff, two times on February 9, 2023, for the safety of the student and staff, and four times on February 17, 2023, for the safety of the student and staff. It further reflects that the parent gave written consent for the use of restraint on February 25, 2021.
21. The documentation of Implementation of Restraint dated February 7, 2023, reflects that the student “called his additional adult the “B” word. He became upset when he had to miss recess to write an apology letter. He was attempting to elope, screaming uncontrollably, and clearing tables. He was inconsolable and becoming more aggressive, throwing objects and banging his head into the wall and glass window and aggressive towards staff members with hitting, punching, pulling hair, biting, kicking, stomping on feet, grabbing clothes, and head butting. The student was restrained 10 times during the course of his behavioral event for his safety and the safety of those around him. Each restraint was short in length due to the student’s reaction to a restraint being difficult to control.” Each incident of restraint was a “standing hold- 1 person” and was conducted by a trained staff member. They ranged from one minute to three minutes and happened consecutively from 11:40 AM to 1:05 PM. The parent was notified by phone of the incident.
22. The documentation of Implementation of Restraint dated February 9, 2023, reflects that the student “became upset in the general education setting because a timer went off for him to finish playing with Play-Doh. The student threw materials in the classroom and was beginning to be physically aggressive. The student was removed from the classroom and escorted to a smaller room. Once removed, he began hitting, punching, kicking, biting, pulling clothes, pulling hair, stomping on others, and head butting. The student was restrained in a standing position. The student was restrained twice. The student was given positive praise when demonstrating safety expectations and expectations were repeated “periodically.” Each restraint was a “standing hold- 1 person” and was conducted by a trained staff member. They ranged from one minute to two minutes and happened consecutively from 10:40 AM to 11:40 AM. The parent was notified by telephone of the incident.
23. The documentation of Implementation of Restraint dated February 17, 2023, reflects that the student “was transitioning back to the classroom after a brief timeout. Upon re-entering, the student began screaming and throwing materials. The student had to be immediately removed from the classroom for the safety of everyone in the class. In the hallway, the student was grabbing at adults,

kicking items in the hallway, and thrashing his body. He was removed to the quiet room, where he became extremely aggressive and out of control. Behaviors consisted of hitting, grabbing, biting, scratching, pulling hair, head butting, and spitting. The student also hit himself in the head repeatedly and banged his head and body into the wall. The student was held in a standing control position. Due to the student's temperament and reaction during restraint, he was let go and re-held multiple times to protect his safety. Over the course of this behavioral incident, the student was held five times." Each restraint was a "standing hold- 1 person" and was conducted by a trained staff member. They ranged from 1 minute to four minutes and happened consecutively from 2:00 PM to 2:30 PM. The parent was notified by telephone of the incident.

CONCLUSIONS:

The public agency must ensure that the use of restraint is limited to instances where it is required to prevent imminent serious physical harm to the student or others. The use of restraint must be documented accordingly, implemented by trained staff, and the parent or guardian must be notified of its use. (COMAR 13A.08.04.05)

Based upon the Findings of Facts #21- #23, MSDE finds that the BCPS has followed proper procedures when using physical restraint with the student since the start of the 2022- 2023 school year, in accordance with COMAR 13A.08.04.05. Therefore, this office does not find a violation occurred with respect to allegation #3.

CORRECTIVE ACTIONS/TIMELINES:

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

MSDE has established reasonable time frames below to ensure that noncompliance is corrected in a timely manner.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. Diane Eisenstadt, Compliance Specialist, Family Support and Dispute Resolution Branch, MSDE, to ensure the effective implementation of the action.² Ms. Eisenstadt can be reached at (410) 767-7770 or by email at diane.eisenstadt@maryland.gov.

Student Specific

MSDE requires the BCPS to provide documentation that the IEP team has convened, reviewed the FBA data, and developed and implemented a BIP by June 15, 2023. In addition, the IEP team must also determine the

¹ 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.

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.

amount and nature of compensatory services or other remedies to redress the violation related to the failure to review, update, and implement the student's BIP as required by the student's IEP. It must develop a plan for the provision of those services within a year of the date of this Letter of Findings.

School Based

MSDE requires the BCPS to provide documentation of the steps taken to ensure that the violations regarding the failure to implement, annually review, and revise based on data, the BIP required by the student's IEP do not recur at [REDACTED] School. Those steps must include staff development and tools created to document and monitor students whose IEP requires the implementation of a BIP. In addition, MSDE further requires the BCPS to develop and implement a monitoring tool to review whether current students' IEPs require a BIP and document the implementation, annual review, and revision according to the student's IEP. The submission of the completed monitoring tool for a random sample of ten students at [REDACTED] School is to be submitted by June 15, 2023.

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: sd

c: Darryl Williams
Conya Bailey
Charlene Harris
Jason Miller
[REDACTED]
Alison Barmat
Gerald Loiacono
Diane Eisenstadt
Sarah Denney