




March 20, 2023




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

RE: 
Reference: #23-128

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 January 19, 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 the above-referenced student.

MSDE investigated the allegation that BCPS did not follow proper procedures when using physical restraint and when using seclusion with the student since September 2022, in accordance with COMAR 13A.08.04.05 and Md. Code, Education Article § 7-1102.

BACKGROUND:

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

FINDINGS OF FACTS:

1. The student’s Individualized Education Program (IEP) in effect at the start of the 2022-2023 school year was developed on February 2, 2022. The IEP indicates the student has a Behavior Intervention Plan (BIP) dated May 29, 2019, and that the parent consented to the use of restraint as part of the BIP on June 12, 2019.

2. The student's BIP in effect at the start of the school year is dated December 13, 2021. The BIP reflects the student has difficulty with physical and verbal aggression and refuses to comply with instruction and directives. While the IEP reflects the use of restraint as part of the student's BIP, there is no indication of the use of physical restraint in the student's BIP.
3. On February 2, 2022, the IEP team met to conduct an annual review of the student's IEP and discuss the need for extended school year (ESY) services. While the IEP continues to reflect the consent for the use of restraint, there is no documentation that the IEP team considered the use of restraint or sought the parent's consent for its use since she first provided consent in 2019.
4. On March 25, 2022, the IEP team met to review and revise the IEP. The Prior Written Notice (PWN) drafted after the meeting reflects that the BCPS staff "reviewed [the student's] BIP". There is no documentation that the team discussed consent for the use of restraint as a part of the student's BIP. The IEP team did not propose any changes to the student's IEP.
5. On December 8, 2022, the student was involved in an incident that resulted in the use of physical restraint. The "Emergency Situation Notes" created by the school staff following the restraint reflects that prior to the restraint the student eloped to the hallway, and the classroom teacher followed him for redirection. The student was provided with choices, but "chose" to throw his lock from his locker down the hall. The student pushed the "Promethean Board", overturned tables, and threw chairs in the common area. Staff directed the student to the "ABLE" room, but the student ran from staff. The student was caught and transported by "double Sunday stroll" (DSS) to the ABLE room. While in the ABLE room, still in the transport hold, the student "kicked and bit the adults holding him". BCPS staff initiated a "two person immobilization" and then a three-person immobilization to "hold his legs". While in the three-person hold, the student continued to resist and attempted to jump out of the immobilization. The BCPS was unable to fade to lesser restraints due to the student's continued resistance. The immobilization required "multiple" adults to change positions and lasted sixteen minutes. The report identifies a staff member who observed the behavior that prompted the use of the restraint, four staff members who implemented the restraint, two staff members who monitored the restraint, the school nurse who examined the student following the restraint, and the administrator who was informed of the restraint. The report reflects the parent was notified by phone and in writing later in the school day. There is no documentation that the form was signed by the school personnel implementing and monitoring the use of restraint or the administrator informed of the use of restraint.
6. On December 16, 2022, the IEP team met to discuss the student's current BIP. The complainant participated in the meeting. The PWN drafted after the meeting, reflects that the IEP team determined the student would meet with the school social worker once a week, receive increased student tokens, add social story pictures to his current picture book, obtain extra lion bucks or tokens during transitions, earn preferred activities, offer the student choices, contact the complainant throughout the day, contact the complainant if the student's behavior escalates, and add social work services to his IEP at the January annual review meeting. The complainant "shared that she doesn't feel comfortable with restraints". There is no documentation that the IEP team reviewed parental consent for the use of restraint as part of the student's IEP and/or BIP. The IEP team did not make any changes to the student's IEP or BIP.

7. On December 16, 2022, the student was involved in an incident that resulted in the use of physical restraint. The "Emergency Situation Notes" created by the school staff following the restraint reflects that prior to the restraint the student refused the classroom activity options and began to knock over chairs and other classroom items. The student attempted to elope into the hallway; however, the classroom teacher blocked the doorway and provided choices for the student. The student continued to yell and throw classroom items. The student was caught and transported with the use of a DSS to the ABLE room. While in the ABLE room, still in the transport hold, the student "kicked and bit the adults holding him". BCPS staff initiated a "two person immobilization" and then a three-person immobilization to "hold his legs". While in the three-person hold, the student continued to resist and attempted to jump out of the immobilization. The BCPS was unable to fade to lesser restraints due to the student's continued resistance. The immobilization required "multiple" adults to change positions and lasted seven minutes. Once the student was out of the immobilization, he began pushing and attempting to scratch adults so he could exit the ABLE room. The BCPS staff initially blocked him, but the student continued pushing and kicking them. The student was DSS transported to the rear of the ABLE room away from the door. The student was restrained for two minutes. The student was instructed to "sit with a calm body and quiet voice" the student refused and charged, shoved, and scratched the BCPS staff. The student was placed in a restraint for two minutes. The report identifies two staff members who observed the behavior that prompted the use of the restraint, four staff members who implemented the restraint, two staff members who monitored the restraint, the school nurse who examined the student following the restraint, and the administrator who was informed of the restraint. The report reflects the parent was notified by phone and in writing later in the school day. There is no documentation that the form was signed by the school personnel implementing and monitoring the use of restraint or the administrator informed of the use of restraint.
8. On December 20, 2022, the student was involved in an incident that resulted in the use of physical restraint. The "Emergency Situation Notes" created by the school staff following the restraint reflects that prior to the restraint the student refused his classroom choices and became aggressive. When BCPS staff redirected the student, he pushed, punched, and kicked the staff. The student was transported by the use of a DSS to the ABLE room. While in the ABLE room, the student forcefully kicked and punched the staff. The BCPS staff implemented a "three person immobilization" that lasted two minutes. The report identifies a staff member who observed the behavior that prompted the use of the restraint, three staff members who implemented the restraint, one staff member who monitored the restraint, the school nurse who examined the student following the restraint, and the administrator who was informed of the restraint. The report reflects the parent was notified by phone later in the school day. There is no documentation that the form was signed by the school personnel implementing and monitoring the use of restraint or the administrator informed of the use of restraint. There is no documentation that the IEP team met within ten business days of the incident.
9. On January 3, 2023, the student was involved in an incident that resulted in the use of physical restraint. The "Emergency Situation Notes" created by the school staff following the restraint reflects that prior to the restraint the student refused his classroom choices and attempted to push and kick school staff. The student was transported by the use of a DSS to the ABLE room. During transport, the student was kicking and biting staff. Upon release in the ABLE room, the student continued to be aggressive. The BCPS staff resumed a DSS and then implemented an immobilization of the student's legs that lasted three minutes. The report identifies two staff members who observed the behavior that prompted the use of the restraint, three staff members who implemented the restraint, one

staff member who monitored the restraint, the school nurse who examined the student following the restraint, and the administrator who was informed of the restraint. The report reflects the parent was notified by phone and in writing later in the school day. There is no documentation that the form was signed by the school personnel implementing and monitoring the use of restraint or the administrator informed of the use of restraint.

10. On January 4, 2023, the student was involved in an incident that resulted in the use of physical restraint. The "Emergency Situation Notes" created by the school staff following the restraint reflects that prior to the restraint the student refused his classroom choices and eloped from his classroom. Once in the hallway, the student fell to the ground. The student was transported by DSS to the "downstairs" ABLE room. During the transport, the student attempted to bite school staff. Once in the ABLE room, the student forcefully kicked the staff. The BCPS staff implemented a three-person immobilization that lasted one minute. The report identifies two staff members who observed the behavior that prompted the use of the restraint, three staff members who implemented the restraint, one staff member who monitored the restraint, the school nurse who examined the student following the restraint, and the administrator who was informed of the restraint. The report reflects the parent was notified by phone after the incident. There is no documentation that the form was signed by the school personnel implementing and monitoring the use of restraint or the administrator informed of the use of restraint.
11. On January 4, 2023, the student was involved in a second incident that resulted in the use of physical restraint. The "Emergency Situation Notes" created by the school staff following the restraint reflects that prior to the restraint the student refused his classroom choices and attempted to throw and turn over objects in the classroom. The student was transported by the use of a DSS to the ABLE room. Once in the ABLE room, the student forcefully kicked the staff. The BCPS staff implemented a three-person immobilization that lasted one minute. The report identifies two staff members who observed the behavior that prompted the use of the restraint, three staff members who implemented the restraint, one staff member who monitored the restraint, the school nurse who examined the student following the restraint, and the administrator who was informed of the restraint. The report reflects the parent was notified by phone during the incident. There is no documentation that the form was signed by the school personnel implementing and monitoring the use of restraint or the administrator informed of the use of restraint.
12. On January 6, 2023, the student was involved in an incident that resulted in the use of physical restraint. The "Emergency Situation Notes" created by the school staff following the restraint reflects that prior to the restraint the student refused to complete classwork, hit and kicked school staff, and attempted to elope from his classroom. The student was transported by the use of a DSS to the ABLE room. Once in the ABLE room, the student forcefully kicked the staff. The BCPS staff implemented a three-person immobilization that lasted one minute. The report identifies the staff member who observed the behavior that prompted the use of the restraint, three staff members who implemented the restraint, one staff member who monitored the restraint, the school nurse who examined the student following the restraint, and the administrator who was informed of the restraint. The report reflects the parent was notified by phone later in the day. There is no documentation that the form was signed by the school personnel implementing and monitoring the use of restraint or the administrator informed of the use of restraint.

13. The student's BIP dated December 13, 2021, was revised on January 6, 2023. The BIP reflects the student has difficulty with physical and verbal aggression and refuses to comply with instruction and directives. There is no indication of the use of physical restraint in the student's BIP. While there is documentation that the BCPS staff revised the BIP, there is no indication that it was discussed and adopted by an IEP team to include the parent.
14. On January 13, 2023, the student was involved in an incident that resulted in the use of physical restraint. The "Emergency Situation Notes" created by the school staff following the restraint reflects that prior to the restraint the student was yelling and screaming at the teacher, kicking items in the classroom, knocking items off desk, threatened to hit the teacher, and charged the teacher while swinging his fists. The student was transported by DSS to the ABLE room. While being transported the student attempted to bite staff. Once in the ABLE room, the student forcefully kicked the staff. The BCPS staff implemented a three-person immobilization that lasted one minute. The report identifies two staff members who observed the behavior that prompted the use of the restraint, two staff members who implemented the restraint (though a three-person immobilization was implemented), one staff member who monitored the restraint, the school nurse who examined the student following the restraint, and the administrator who was informed of the restraint. The report reflects the parent was notified by phone later in the day. There is no documentation that the form was signed by the school personnel implementing and monitoring the use of restraint, or that the administrator was informed of the use of restraint.
15. On January 18, 2023, the IEP team met to conduct an annual review of the student's IEP. The PWN drafted after the meeting reflects that the BCPS staff updated the student's goals, added social work services, revised the student's supplementary aids and services, and determined the student eligible for extended school year. The PWN further reflects that the IEP team updated the student's BIP in December. There is no documentation that the IEP team considered the need for a functional behavior assessment, the development of appropriate behavioral interventions, or the implementation of the student's BIP. The student's IEP developed at this meeting continues to reflect that the student's BIP is dated May 29, 2019, and the parent consented on June 12, 2019. There is no documentation that the IEP team considered the use of physical restraint as part of the student's BIP or if the school-based IEP team is recommending the inclusion of physical restraint to the student's BIP.
16. On January 18, 2023, the student was involved in an incident that resulted in the use of physical restraint. The "Emergency Situation Notes" created by the school staff following the restraint reflects that prior to the restraint the student eloped from the classroom, knocked forcefully on the classroom window, climbed on the window sills and continued off task behavior in the hallway. The school staff was unable to redirect the student. The student was transported by the use of a DSS to the ABLE room. While being transported the student attempted to bite staff. Once in the ABLE room, the student forcefully kicked the staff. The BCPS staff implemented a two-person immobilization. There is no documentation regarding the amount of time the student was restrained. The report identifies the staff member who observed the behavior that prompted the use of the restraint, two staff members who implemented the restraint, one staff member who monitored the restraint, the school nurse who examined the student following the restraint, and the administrator who was informed of the restraint. The report reflects the parent was notified by phone later in the day. There is no documentation that the form was signed by the school personnel implementing and monitoring the use of restraint, or that the administrator was informed of the use of restraint.

19. On February 1, 2023, the student was involved in an incident that resulted in the use of physical restraint. The "Emergency Situation Notes" created by the school staff following the restraint reflects that prior to the restraint the student was upset during transition, throwing items in the classroom, destroying school property, and eloped into the hallway. The student was transported by the use of a DSS to the ABLE room. While being transported the student kicked staff and school property. Once in the ABLE room, the student continued his aggression by kicking the staff. The BCPS staff implemented a two-person immobilization that lasted two minutes. The report identifies the staff member who observed the behavior that prompted the use of the restraint, two staff members who implemented the restraint, one staff member who monitored the restraint, the school nurse who examined the student following the restraint, and the administrator who was informed of the restraint. The report reflects the parent was notified by phone immediately after the incident. There is no documentation that the form was signed by the school personnel implementing and monitoring the use of restraint, or the administrator informed of the use of restraint. There is no documentation that the IEP team met within ten business days of the incident.
20. There is documentation that a staff member involved in the use of restraint on December 8, 2022, and January 6, 2023 was not currently certified in its use. There is documentation that this staff member at the student's school was last provided training on the proper use of restraint on November 3, 2021. There is documentation that the remaining staff at the student's school was provided training on the proper use of restraint in August, October, and December 2022.
21. There is no documentation that the school staff utilized seclusion with the student since September 2022. While there is documentation that the student was removed from the classroom to the ABLE room during behavioral incidents, the documentation reflects that the student was accompanied in the room in each instance.

CONCLUSIONS:

Use of physical restraint

The use of physical restraint is prohibited in public agencies and nonpublic schools unless there is an emergency situation and physical restraint is necessary to protect a student or another person from imminent, serious physical harm after other less intrusive, nonphysical interventions have failed, or been determined inappropriate. Schools must ensure that parental consent is obtained prior to including restraint in a student's IEP (COMAR 13A.08.04.05A(1)(a)).

Imminent, serious, physical harm has the same meaning as serious bodily injury as used in the Individuals with Disabilities Education Act (IDEA). It means bodily injury, which involves a substantial risk of death; extreme physical pain; protracted and obvious disfigurement; or protracted loss or impairment of the function of a bodily member, organ, or mental faculty (34 C.F.R. § 300.530(h)(i)(3) and 18 U.S.C. § 1365(h)(3)).

Physical restraint shall be removed as soon as the student is calm and may not exceed thirty (30) minutes (COMAR 13A.08.04.05A(1)(d)). When utilizing physical restraint, school personnel may not place a student in a facedown position. School personnel may not place a student in any other position that will obstruct the student's airway or otherwise impair the student's ability to breathe. School personnel may not place a student in a position that will obstruct a staff member's view of the student's face, restrict the student's

ability to communicate distress, or place pressure on the student's head, neck, or torso. School personnel may not straddle the student's torso (COMAR 13A.08.04.05A(1)(e)).

Documentation of the use of restraint

Each time a student is restrained, school personnel must document the other less intrusive interventions that have failed, or been determined inappropriate, the precipitating event immediately preceding the behavior that prompted the use of restraint, the behavior that prompted the use of restraint, the names of the school personnel who observed the behavior that prompted the use of restraint, and the names and signatures of the staff members implementing and monitoring the use of restraint (COMAR 13A.08.04.05A(3)(a)).

The documentation shall include a description of the restraint event, including the type of restraint; the length of time in restraint; the student's behavior and reaction during the restraint; and the name and signature of the administrator informed of the use of restraint (COMAR 13A.08.04.05A(3)(b)). Each time restraint is used, the student's parent must be provided oral or written notification within twenty-four hours, unless otherwise provided for in the student's BIP or IEP (COMAR 13A.08.04.05A(5)).

Requirement to meet following the use of restraint

If restraint is used, and the student's IEP or BIP does not include the use of restraint, the IEP team shall meet within ten business days of the incident to consider the need for conducting a Functional Behavior Assessment (FBA), developing appropriate behavioral interventions, and implementing a BIP. If the student already has a BIP, the team, at that meeting, must review and revise it, as appropriate, to ensure that it addresses the student's behavioral needs (COMAR 13A.08.04.05C(2)).

Training of school personnel in the proper use of physical restraint

Each public agency must provide professional development and training to designated school personnel on the appropriate implementation of the policies and procedures related to the use of restraint. The professional development and training must also include current professionally accepted practices and standards regarding positive behavioral intervention strategies and supports, functional behavioral assessment and behavior intervention planning, exclusion, restraint, and seclusion (COMAR 13A.08.04.06C(1)).

The training in current professionally accepted practices and standards regarding positive behavior interventions strategies and supports must include methods for identifying and defusing potentially dangerous behavior, FBA and BIP planning, exclusion, restraint and alternatives to restraint, seclusion, and symptoms of physical distress and positional asphyxia (COMAR 13A.08.04.06C(3)). Professional development shall include a written examination and a physical demonstration of proficiency in the described skills and competencies (COMAR 13A.08.04.06C(4)).

Based on the Findings of Facts #1 to #20, MSDE finds that the BCPS did not follow proper procedures when using physical restraint with the student since September 2022, by conducting a restraint that was not in response to a threat of imminent, serious, physical harm, failing to obtain written consent from the parent, by applying physical restraint by school personnel whose training had expired, failing to provide the signatures of the school personnel implementing and monitoring the use of restraint, failing to provide the signatures of the administrator informed of the use of restraint, and not convening an IEP team meeting

within ten business days of the incident, in accordance with COMAR 13A.08.04.05. Therefore, this office finds that a violation has occurred with respect to this aspect of the allegation.

Based on the Findings of Fact #21, MSDE finds that there were no instances of the use of seclusion since September 2022. Therefore, this office finds that no violation occurred with respect to this aspect of the allegation.

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 non-compliance 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 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 by April 15, 2023, of the following actions:

That the IEP team has convened to:

- Consider the need for more appropriate behavior interventions to address the student's behaviors, as determined by the IEP team;
- Include accurate statements of the parent's consent to the use of restraint as part of the student's IEP and/or BIP and ensure that if the parent's consent for the use of restraint is sought that the parent knows of her right to refuse consent; and
- Determine the amount and nature of compensatory services to redress the violation related to the implementation of the use of restraints and develop a plan for the provision of those services within one year of the date of this Letter of Findings.

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.

The BCPS must ensure that the parent is provided with written notice of the team's decisions. The parent maintains 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 BCPS to provide documentation by May 1, 2023, that the staff at the ██████████ ██████████ School who engage in physical restraint are trained and certified. BCPS must also provide professional development to be completed by May 1, 2023, to ensure that the staff at ██████████ ██████████ School properly implements the requirements for the use of physical restraint, and the proper documentation of it on the student's BIP and IEP under the IDEA and State law. BCPS must also develop a monitoring tool to ensure that proper procedures are followed for the use of physical restraint for students at the ██████████ School, beginning no later than May 1, 2023. Results of monitoring must be provided to MSDE 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

DMF: tg

c: Darryl Williams
Jason Miller
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