

February 1, 2024

Redacted¹

Ms. Rebecca Miller
Director for Special Education
Cecil County Public Schools
201 Booth Street
Elkton, Maryland 21921

RE: [REDACTED]
Reference: #24-092

Dear Parties:

The Maryland State Department of Education, Division of Early Intervention and 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.

ALLEGATION:

On November 3, 2023, MSDE received a complaint from the complainant on behalf of the above-referenced student. In that correspondence, the complainant alleged that the Cecil County Public Schools (CCPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to the above-referenced student.

MSDE investigated the allegation that the CCPS has not ensured that proper procedures were followed when utilizing restraint with the student since July 2023, in accordance with Md. Code, Education §§ 7-1101, 7-1102, 7-1103 and COMAR 13A.08.04.05.

BACKGROUND:

The student is sixteen years old and is identified as a student with an Intellectual Disability under the IDEA. He is placed by the CCPS at [REDACTED], a nonpublic special education program and has an Individualized Education Program (IEP) that requires the provision of special education services.

FINDINGS OF FACTS:

1. The student's IEP in effect since July 2023 was developed on September 1, 2022. The IEP indicates the student has a Behavior Intervention Plan (BIP) dated September 2, 2022, and that the parent did not consent to the use of restraint as part of the student's IEP and/or BIP. There is no documentation that the use of a protective or stabilizing device is required in the student's BIP or IEP.

¹ At the complainant's request, their name and contact information will not be shared with the local education agency.

2. There is documentation that on March 17, 2023, the student's BIP was updated for implementation beginning March 20, 2023. The BIP reflects that the student requires the use of physical restraint when his behavior poses immediate danger to himself or others. The BIP requires "staff using their hands to block [the student's] hands and/or his body to prevent him from engaging in continuous aggression and/or disruption. Restraint should be used only as a last resort in the event that attempts to safely redirect [the student] to another location or activity have failed. In the event that the staff are required to use physical restraint, the occurrence will be documented. Staff should perform and document a well body check to look for any indication of bruising or other injury. The IEP team will meet monthly to discuss the restraints that occurred "during the month and review the BIP to determine if any revisions are needed." There is no documentation that the BIP requires the use of mechanical restraint or a protective or stabilizing device.
3. There is no documentation that the IEP team updated the student's IEP to include the BIP developed on March 17, 2023.
4. There is documentation that in October 2023, the student was wearing materials wrapped around his midsection and over his shoulders used to restrain his upper arms to his side.
5. On October 17, 2023, [REDACTED] health staff documented a health room visit that reflects the student was wearing an "arm restraint harness" to prevent injury that was approved by the [REDACTED] administrator and behavior staff.
6. On November 21, 2023, a health professional prescribed a velcro back brace for use at school to prohibit the student from hitting himself.
7. On December 4, 2023, the IEP team met to conduct an annual review of the student's IEP. The IEP indicates the student requires the implementation of a BIP dated December 4, 2023, and does not reflect that the parent consented to the use of restraint as part of the student's IEP and/or BIP. The IEP further requires adaptive equipment, such as a slant board, knee pads and a padded helmet, to prevent the occurrence of eye poking and injury to his head when the student engages in repetitive self-injurious behaviors.
8. There is no documentation that the use of a protective device or stabilizing device is required in the student's December 4, 2023, BIP or IEP.
9. On January 11, 2024, [REDACTED] health staff prepared an Emergency Care Plan that reflects that the student requires a "protective restraint on arms/chest". There is no documentation that this plan was included in the student's IEP.

DISCUSSION/CONCLUSIONS:

Use of mechanical device and protective and stabilizing device

The use of mechanical restraint is prohibited in public agencies and nonpublic schools unless a public agency or nonpublic school is accredited by and meets the requirements of the Joint Commission. This does not preclude school personnel from using a protective or stabilizing device as prescribed by a health professional, or for a student with a disability, in accordance with the student's IEP or BIP. (COMAR 13A.08.04.05A(2))

A "protective or stabilizing device" means any device or material attached or adjacent to the student's body that restricts freedom of movement or normal access to any portion of the student's body for the purpose of enhancing functional skills, preventing self-injurious behavior, or ensuring safe positioning of a person. A protective or stabilizing device includes:

- Adaptive equipment prescribed by a health professional, if used for the purpose for which the device is intended by the manufacturer;
- Seat belts; or
- Other safety equipment to secure students during transportation in accordance with the public agency or nonpublic school transportation plan. (COMAR 13A.08.04.02B(16))

In this case, the complainant alleges that [REDACTED] utilized a mechanical restraint in October 2023 when the student wore materials around his midsection restraining his upper arms to his side. The CCPS alleges that the materials were a protective device prescribed by a health professional. However, there is no documentation that the materials used in October and November 2023 were either prescribed by a health professional or documented in the student's IEP or BIP. Furthermore, when the [REDACTED] received documentation from the student's physician prescribing the brace in November 2023, there is no evidence that the student's IEP or BIP was updated to address this need.

Based upon the Findings of Facts #1, #2, #4, and #5, MSDE finds that the CCPS has not ensured that proper procedures were followed when a mechanical restraint was used on the student from October 2023 to November 20, 2023, by using a protective device that was not prescribed by a health professional or in accordance with the student's IEP or BIP in accordance with COMAR 13A.08.04.05. Therefore, this office finds that a violation did occur with respect to this aspect of the allegation.

Based upon Findings of Facts #1 and #6 to #9, MSDE finds that the CCPS has not ensured that proper procedures were followed when utilizing a protective device prescribed by a health professional since November 21, 2023, by failing to include the use of the device on the student's IEP or BIP, in accordance with COMAR 13A.08.04.05A(2). Therefore, this office finds that a violation did occur with respect to this aspect of the allegation.

ADDITIONAL VIOLATION IDENTIFIED DURING THE COURSE OF THE INVESTIGATION

The public agency must ensure that the child's IEP is reviewed periodically, but not less than annually, to determine whether the annual goals for the child are being achieved. In the case of a student whose behavior impedes the student's learning or that of others, the team must consider the use of positive behavioral interventions and supports and other strategies, to address that behavior. (34 CFR §300.324(a)(2)(i))

Based upon the Findings of Facts #1 and #7, MSDE finds that the CCPS did not ensure that the IEP team convened to review the student's IEP before September 1, 2023, in order to ensure that the IEP was reviewed at least annually, in accordance with 34 CFR §300.324. Therefore, this office finds that a violation did occur.

Based upon the Findings of Facts #2, #3, and #6 to #9, MSDE finds that the CCPS did not ensure that the IEP addresses the student's behavioral needs since March 20, 2023, by failing to update the IEP to include the BIP developed on March 17, 2023, and the use of a protective or stabilizing device prescribed by a health professional since November 21, 2023. Therefore, this office finds that a violation did occur.

CORRECTIVE ACTIONS/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. MSDE has established reasonable time frames below to ensure that non-compliance 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 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. Sarah Denney, Compliance Specialist, Family Support and Dispute Resolution Branch, MSDE, to ensure the effective implementation of the action.³ Ms. Denney can be reached at (410) 767-7770 or by email at Sarah.Denney@maryland.gov.

Student-Specific

MSDE requires the CCPS to provide documentation by April 1, 2024, that the school system has convened an IEP team meeting to determine whether the violations identified in this Letter of Findings regarding the failure to address the student's behavior needs, use of mechanical restraint, use of a protective or stabilizing device, and failure to review the IEP annually, had a negative impact on the student's ability to benefit from the education program. If the IEP team determines that there was a negative impact, it must also determine the amount and nature of compensatory services or other remedy to redress the violation and develop a plan for the provision of those services within one year of the date of this Letter of Findings. The IEP team must also update the IEP to include appropriate behavior and health supports to provide Free Appropriate Public Education (FAPE) for the student.

The CCPS 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 CCPS to provide documentation by April 1, 2024, of the steps it has taken to ensure that [REDACTED] staff properly implements the requirements for the review and revision of IEPs, the use of a mechanical restraint, the use of a protective or stabilizing device, and annual IEP review under the IDEA and COMAR. These steps must include staff development, as well as tools developed to monitor compliance.

² 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.

³ MSDE will notify the public agency's Director of Special Education of any corrective action that has not been completed within the established timeframe.

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 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/tg

c: Dr. Jeffrey A. Lawson, Superintendent, CCPS
Ms. Alison Barmat, Branch Chief, Family Support and Due Process, MSDE
Ms. Nicol Elliott, Section Chief, Monitoring and Accountability, MSDE
Dr. Paige Bradford, Section Chief, Specialized Instruction, MSDE
Ms. Tracy Givens, Complaint Investigator, Dispute Resolution, MSDE