

March 15, 2024

[REDACTED]
[REDACTED]
[REDACTED]

Ms. Colleen Sasdelli
Director of Special Education
Harford County Public Schools
102 S. Hickory Avenue
Bel Air, Maryland 21014

RE: [REDACTED]
Reference: #24-126

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 17, 2024, MSDE received a complaint from [REDACTED], “the complainant,” on behalf of her son, the above-referenced student. In that correspondence, the complainant alleged that the Harford County Public Schools (HCPS) 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 HCPS has not ensured that proper procedures were followed when physical restraint and seclusion were used with the student, since January 2023, in accordance with COMAR 13A.08.04.05.
2. The HCPS has not ensured that the student was provided with the transportation services required by his Individualized Education Program (IEP) since January 2023, in accordance with 34 CFR §§300.323.

BACKGROUND:

The student is eight years old and is identified as a student with Multiple Disabilities under the IDEA. Currently, the student is homeschooled. During the 2022-2023 and 2023-2024 school years, the student was placed by HCPS and attended [REDACTED] ([REDACTED]), a non-public, separate, special education school. The student has an IEP that requires the provision of special education instruction and related services.

FINDING OF FACTS:

1. The student's IEP, in effect in January 2023, was amended on December 27, 2022. The IEP requires that the student be provided with support in the areas of early literacy, math problem-solving, pre-writing, speech and language articulation, self-management, social emotional/ behavioral, social interaction skills, fine motor, and sensory processing strategies. The IEP includes goals addressing the same areas of concern except for sensory processing strategies. The IEP requires that the student receive 28 hours and 40 minutes a week of specialized instruction outside of the general education classroom, 20 minutes a week of occupational therapy outside of the general education classroom, 30 minutes a week of counseling services outside of the general education classroom, and 30 minutes a week of speech and language therapy as a related service outside of the general education classroom. The IEP also reflects that the student requires specialized transportation with additional supervision from a bus attendant to and from school to encourage him to make good choices and maintain personal safety.
2. The IEP requires the provision of instructional support, social/behavioral support, physical/environmental support, school personnel/parental support, and support to access a modified general education curriculum. Furthermore, the IEP reflects that the student requires periodic intervention and de-escalation strategies when demonstrating prolonged unsafe behaviors, as well as daily adult support to implement behavior strategies and reinforcement systems.
3. The IEP reflects that the student has a Functional Behavior Plan (FBA) dated April 22, 2022, and a Behavior Intervention Plan (BIP) dated May 5, 2022. The BIP reflects that the student has difficulty with physical aggression, disruptive, and noncompliant behaviors. It also notes that on June 13, 2022, the parent did not consent to the use of hands-on transports¹, restraints, mat enclosures, blocking/corraling with mats, seclusion, isolation, denial of recess, or extended time away from all peers.
4. There is documentation that the student's BIP was updated by the IEP team on October 11, 2022, December 12, 2022, March 1, 2023, May 5, 2023, and July 13, 2023, due to the use of transport, seclusion, and the need for additional interventions. The student's BIP reflects that, because the student's IEP does not include the use of seclusion and restraint, staff will notify an administrator and the behavior department if implemented. The BIP also reflects that the school team will use crisis management intervention procedures per the Professional Crisis Management (PCM) intervention guidelines as a crisis intervention, if warranted by the student due to unsafe behaviors.

¹ "Transport" is a term used in specific behavior intervention training programs. The Transformation Academy uses Professional Crisis Management. The term "transport" is not defined in State statute or regulations. A transport is NOT a physical restraint, so long as it does not immobilize a student or reduce the ability of the student to move their torso, arms, legs, or head freely. See Maryland Code, Education, § 7-1101(d).

5. The school's incident report dated February 21, 2023, reflects that the school staff utilized the "double Sunday stroll²" to transport the student to the support room to de-escalate an incident in response to the student's aggression towards students and staff, as well as the destruction of property. The student required the use of seclusion in which he was monitored by a health care practitioner.
6. On March 7, 2023, the IEP team convened to discuss the incident that occurred on February 21, 2023, related to the use of crisis intervention protocols and seclusion for the student and to review the student's current BIP. The IEP meeting summary reflects that the team reviewed the incident, including behaviors exhibited by the student and interventions utilized by school staff prior to the use of transport and seclusion, as well as behaviors exhibited by the student during the use of transport and seclusion. It was noted that "PCM measures were used in addressing the student when he was in crisis." During the meeting, the parent refused to include seclusion/restraint as a part of the student's BIP. The team proposed that the student's behavior would continue to be monitored and addressed via the BIP, as well as embedded behavioral protocols of the school, which are part of daily operational programming for all students.
7. On March 22, 2023, the student was involved in a behavior incident that lasted for ten minutes. The incident report reflects that the school staff utilized the "double Sunday stroll" to transport the student to the support room to de-escalate the incident in response to the student's aggression towards staff. The student required the use of seclusion in which he was monitored by a health care practitioner.
8. On April 13, 2023, the IEP team convened to discuss the March 22, 2023, incident due to the use of crisis intervention protocols, specifically seclusion, and to review the student's current BIP. The IEP meeting summary reflects that the team reviewed the incident, including the student's behavior and interventions utilized by school staff prior to the use of transport and seclusion, and the student's behaviors during the use of transport and seclusion. It was noted that "PCM measures were used in addressing the student when he is in crisis." The written summary of the IEP meeting reflects the school team and the parent's counsel agreed to coordinate to ensure that language in the student's BIP is congruent with current State regulations. It was also noted that the school-based Board-Certified Behavior Analyst (BCBA) stated if an "increase of aggressive behaviors continues, that the team will request an updated FBA to address the exhibited behavioral challenges of [the student] since enrolling in their program."
9. On July 27, 2023, the IEP team convened the annual IEP team meeting. The IEP reflects that the student requires access to staff trained in crisis prevention and intervention, de-escalation, and response strategies, as well as positive behavior intervention, supports, and strategies when he becomes aggressive or non-compliant, as a supplementary aid. Additionally, the IEP reflects that "due to the student's trauma history, particularly within the educational environment, the complainant is not in agreement with the use of hands-on transports/escorts, restraint, or seclusion."

² A PCM escort technique that is used to escort a person to a safe area.

10. The IEP requires transportation services with additional supervision from a bus attendant to and from school to encourage him to make good choices and maintain personal safety. Additionally, the IEP states that the school team and the HCPS Transportation department will conduct periodic trainings that are "student and BIP- specific."
11. On August 10, 2023, the school team and the HCPS provided training to the transportation staff for the summer transportation workers. The HCPS transportation workers in attendance were the supervisor of transportation, bus driver, and attendant.
12. At the start of the 2023-2024 school year, there was a vacancy that required the use of substitute bus attendants on the student's bus. There is no documentation that the substitute bus attendants received training as required by the IEP.
13. On October 6, 2023, the IEP team met to discuss transportation safety concerns per the complainant. During the meeting, the written summary of the IEP meeting generated after the meeting reflects that the IEP team determined the student would switch buses to help reduce behavior concerns and that the "new team will receive the same training provided to the summer team." On October 11, 2023, the student was assigned to another school bus. There is no documentation that the bus driver received the training as required by the IEP.
14. From January 2023 to November 2023, the student received 21 "minor incident reports" which required the student to utilize the support room. In these instances, staff "transported" the student using the "double Sunday stroll" due to various behavior incidents. The "double Sunday stroll" was demonstrated as the use of two staff members, one on each side of the student, placing one of their arms interlocked with the student's arm and their other hand on the student's wrist. Once in this position, the staff members walk with the student to the designated area. Staff used the support room to help de-escalate the student, and while in the support room, they implemented the de-escalation protocol outlined in the BIP. It is noted that while in the support room, the door was not prevented from being opened.
15. There is no documentation that the student was physically restrained.
16. On November 10, 2023, the complainant withdrew the student from the school.

DISCUSSION:

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).

"Seclusion" means the confinement of a student alone in a room, an enclosure, or any other space from which the student is physically prevented from leaving during school hours. "Seclusion" does not include a behavior intervention plan of separating a student by placing the student:

- (i) Into a nonlocked room from which the student is allowed to leave; or
- (ii) Within a separate location in a classroom from which the student is not physically prevented from leaving. (COMAR 13A.08.04.02)

The use of physical restraint

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;³ and
- (ii) Other less intrusive, nonphysical interventions have failed or been demonstrated to be inappropriate for the student.

Physical restraint shall only be implemented and monitored by school personnel who are trained in the appropriate use of physical restraint consistent with COMAR 13A.08.04.06C.

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.

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.

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)

The use of seclusion

The use of seclusion is prohibited in public agencies. The use of seclusion is prohibited in nonpublic schools unless:

- (a) Seclusion is necessary to protect the student or another individual from imminent, serious physical harm;
- (b) Other, less intrusive interventions have failed or been demonstrated to be inappropriate for the student;
- (c) A qualified health care practitioner is on-site and is directly observing the student during the seclusion; and
- (d) The health care practitioner concludes that seclusion is not contraindicated for the physical, psychological, or psychosocial health of the student.

³ Serious physical harm has the same meaning as "serious bodily injury" as defined in 18 U.S.C. §1365(h)(3). (COMAR 13A.08.03.02) "Serious bodily injury" means an injury inflicted on another individual that results in:

1. A substantial risk of death;
2. Extreme physical pain;
3. Protracted and obvious disfigurement; or
4. Protracted loss or impairment of the function of a bodily member, organ, or mental faculty in accordance with 18 U.S.C. § 1365(h)(3).

Before a health care practitioner may use seclusion as a behavioral health intervention for a student in a nonpublic school, the health care practitioner shall:

- (a) Receive training in all topics required under COMAR 13A.08.04.06; and
- (b) Be clinically familiar with the student. (COMAR 13A.08.04.05B)

Documentation of the use of seclusion

Each time a student is placed in seclusion, school personnel involved in the seclusion incident shall debrief and document the incident using a form developed by the Department that includes:

- (i) Other less intrusive interventions that have failed or been determined inappropriate;
- (ii) The precipitating event immediately preceding the behavior that prompted the use of seclusion;
- (iii) The behavior that prompted the use of seclusion; and
- (iv) The length of time in seclusion;
- (v) The student's behavior and reaction during the seclusion;
- (vi) The names and signatures of the school personnel implementing and monitoring the seclusion; and
- (vii) The names and signatures of the staff members implementing and monitoring the seclusion." (COMAR 13A.08.04.05B(8))

Requirement to meet following the use of seclusion

If restraint or seclusion is used, and the student's IEP or BIP does not include the use of restraint or seclusion, the IEP team shall meet within ten business days of the incident to consider the need for conducting a 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)).

CONCLUSIONS:

ALLEGATION #1: USE OF PHYSICAL RESTRAINT AND SECLUSION

In this complaint, the complainant alleged that the student was physically restrained or placed in seclusion, resulting in a denial of a free appropriate public education (FAPE). The student was placed in a "double Sunday stroll" which the school identifies as a "transport" and not a "physical restraint". However, the student was placed in a "double Sunday stroll" by two adults and his arms were restricted from movement as they walked him to a safe space to de-escalate. The student was also placed in seclusion.

Based on Findings of Fact #5 to #8, #14, and #15, MSDE finds that the student was physically restrained during the use of the "double Sunday Stroll". Therefore, the HCPS has not ensured that proper procedures were followed when physical restraint was used with the student, since January 2023, in accordance with COMAR 13A.08.04.05. Therefore, this office finds that a violation occurred concerning this allegation.

The complainant did not provide consent for the use of physical restraint, transport, and or seclusion. In this case, the IEP team did not meet within ten business days of an incident to consider the need for conducting a FBA, developing appropriate behavioral interventions, and implementing a BIP.

Based on Finding of Fact #8, MSDE finds that the HCPS has not ensured that proper procedures were followed when seclusion was used with the student, since January 2023, in accordance with COMAR 13A.08.04.05. Therefore, this office finds that a violation occurred concerning this allegation.

ALLEGATION #2: PROVISION OF TRANSPORTATION SERVICES

Based on Findings of Fact #1, #10, #11, and #13, MSDE finds that the HCPS has not ensured that the student was provided with the transportation services required by his IEP since July 27, 2023, in accordance with 34 CFR §§300.323. Therefore, this office does find that a violation occurred concerning this 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 noncompliance is corrected in a timely manner.⁴ 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. Alison Barmat, Branch Chief, Family Support and Dispute Resolution, MSDE, to ensure the effective implementation of the action.⁵ Ms. Barmat can be reached at (410) 767-7770 or by email at Alison.barmat@maryland.gov.

Student-Specific

MSDE requires the HCPS to provide documentation by May 1, 2024, that the IEP team has convened and determined whether the violation related to the allegations in this Letter of Finding had a negative impact on the student's ability to benefit from the education program. If the 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 a year of the date of this Letter of Findings.

⁴ 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.

⁵MSDE will notify the public agency's Director of Special Education of any corrective action that has not been completed within the established timeframe.

The HCPS must ensure that the complainant is provided with written notice of the team's decisions. The complainant maintains the right to request mediation or to file a due process complaint to resolve any disagreement with the team's decisions.

Systemic

MSDE requires the HCPS to provide documentation by May 31, 2024, of the steps it has taken to ensure that school staff properly implement the requirements for conducting periodic training to all transportation staff on routes that require the training based on the student's IEP. The documentation must include a description of how the HCPS will evaluate the effectiveness of the steps taken and monitor to ensure that violations do not recur.

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,

Antoine L. Hickman, Ed.D.
Assistant State Superintendent
Division of Early Intervention and Special Education Services

ALH/sj

c: Sean Bulson, Superintendent, HCPS
[REDACTED], Principal, HCPS
Alison Barmat, Branch Chief, Family Support and Dispute Resolution, MSDE
Dr. Paige Bradford, Section Chief, Performance Support and Technical Assistance, MSDE
Nicol Elliott, Section Chief, Monitoring and Accountability, MSDE
Tracy Givens, Section Chief, Dispute Resolution, MSDE
Stephanie James, Complaint Investigator, MSDE