

August 30, 2024

[REDACTED]  
[REDACTED]  
[REDACTED]

Ms. Allison Myers  
Executive Director  
Special Education Services  
Baltimore County Public Schools  
105 W Chesapeake Avenue  
Towson, Maryland 21204

RE: [REDACTED]  
Reference: #24-272

Dear Parties:

The Maryland State Department of Education (MSDE), Division of Early Intervention and Special Education Services, has completed the investigation of the complaint regarding special education services for the above-referenced student. This correspondence is the report on the final results of the investigation.

**ALLEGATIONS:**

On June 14, 2024, the MSDE received a complaint from [REDACTED], hereafter, “the complainant,” on behalf of the above-referenced student. In that correspondence, the complaint alleged that the Baltimore County Public Schools (BCPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) concerning the above-referenced student.

MSDE investigated the following allegations:

1. The BCPS has not followed proper procedures when using physical restraint and seclusion since June 2023, in accordance with COMAR 13A.08.04.05.
2. The BCPS has not ensured that the student was provided with special education instruction and a dedicated aide as required by Individualized Education Program (IEP), since the beginning of the 2023-2024 school year, in accordance with 34 CFR §§ 300.101 and .323.

**BACKGROUND:**

The student is 11 years old and is a student with a Specific Learning Disability (SLD) under the IDEA. He attends [REDACTED] and has an IEP that requires the provision of special education instruction and related services.

## **ALLEGATION #1**

## **USE OF PHYSICAL RESTRAINT AND SECLUSION**

### **FINDINGS OF FACT:**

1. The IEP, in effect in August 2023, was developed on May 25, 2023. The IEP reflects that the following areas are impacted by the student's disability: reading phonics; reading comprehension; mathematics; and writing. The IEP requires 27 hours and 30 minutes per week of specialized classroom instruction outside of the general education setting. The IEP requires supplementary aids and services including daily adult support.

The IEP reflects that the student has a Functional Behavior Assessment (FBA) dated January 13, 2022, and a Behavior Intervention Plan (BIP) dated May 11, 2023. The BIP reflects that the student has difficulty with elopement and physical aggression. The IEP further reflects that the IEP team did not consider the use of restraint, and the complainant did not consent to the use of restraint as part of the student's BIP or IEP.

2. On October 23, 2023, the student was involved in an incident that resulted in the use of physical restraint. The report reflects that the student was in the focus room after eloping from his instructional area, the student "continuously attempted to attack staff." The student eloped from the focus room, hit, kick, and touched staff members. Staff transported the student back to the focus room, however, once released student would begin "attacking staff again and/or attempt to elope."

The incident report also reflects:

- total time and type of restraint;
- student behavior and reaction during the restraint;
- the name, role, and signature of staff who observed, implemented, or monitored the restraint; and
- the name and signature of administrator, evaluation by the school nurse, and parent notification by phone.

3. On October 23, 2023, a second restraint occurred. Following the release from the initial restraint, the student began kicking and punching staff. The restraint report reflects the student was restrained for five minutes after being released from the prior restraint.

The incident report further reflects:

- total time and type of restraint;
- student behavior and reaction during the restraint;
- the name, role, and signature of staff who observed, implemented, or monitored the restraint; and
- the name and signature of administrator, evaluation by the school nurse, and parent notification by phone.

4. There is documentation that the staff members who observed and implemented the physical restraints used on October 23, 2023, were certified in its appropriate use.

5. On November 6, 2023, the IEP team convened to review and discuss the use of physical restraints on October 23, 2023. The prior written notice (PWN) developed after the IEP team meeting reflects that the IEP team reviewed behavior data, confirmed the provision of daily adult support, and proposed to place the student in different classrooms where he can take on the role of helper/caretaker to support developing positive behaviors.

There is no documentation that the IEP team reviewed the student's BIP to ensure that it addressed the student's behavioral needs.

6. On June 13, 2024, the IEP team convened for the student's annual review meeting. The IEP developed requires 27 hours and 30 minutes per week of specialized classroom instruction outside of the general education setting. The IEP requires supplementary aids and services including daily adult support.

The IEP also reflects that the BIP was reviewed and revised. The BIP continues to reflect that the student has difficulty with elopement and physical aggression. The IEP further reflects that the IEP team did not consider the use of restraint, and the complainant did not consent to the use of restraint as part of the student's BIP or IEP.

7. There is no documentation to support the complainant's allegation that the student has been secluded since June 2023.

## **CONCLUSIONS AND DISCUSSION:**

### **Physical Restraint**

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).

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;<sup>1</sup> and
- (ii) Other less intrusive, nonphysical interventions have failed or been demonstrated to be inappropriate for the student.

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<sup>1</sup> 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).

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)

## **Seclusion**

"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 seclusion is prohibited in public agencies. (COMAR 13A.08.04.05B(1)).

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 restraint or 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)).

Based on the Findings of Fact #1 through #5, MSDE finds that the BCPS did not follow proper procedures by failing to review the student's BIP to ensure it addressed the student's behavioral needs on November 6, 2023, in accordance with COMAR 13A.08.04.05. Therefore, this office finds that a violation occurred concerning this aspect of the allegation.

#### **Use of seclusion**

Based on the Finding of Fact #7, MSDE finds that the student was not secluded since June 2023, in accordance with COMAR 13A.08.04.05. Therefore, MSDE finds that a violation did not occur concerning this aspect of the allegation.

#### **ALLEGATION #2**

#### **PROVISION OF SPECIAL EDUCATION INSTRUCTION AND ADULT SUPPORT**

##### **FINDINGS OF FACT:**

8. There is documentation that the student was provided with adult support from August 2023 through April 2024 and June 2024.
9. There is no documentation that the student was provided with adult support in May 2024.
10. There is documentation that the student was provided with specialized instruction as required by the IEP since the beginning of the 2023-2024 school year.

##### **CONCLUSIONS:**

Based on the Findings of Fact #1, #6, and #10, MSDE finds that the BCPS has ensured that the student was provided with special education instruction as required by the IEP, since the beginning of the 2023-2024 school year, in accordance with 34 CFR §§ 300.101 and .323. Therefore, MSDE finds a violation did not occur concerning this aspect of the allegation.

Based on the Findings of Fact #1, #6, #8, and #9, MSDE finds that the BCPS has not ensured that the student was consistently provided with adult support during May 2024 as required by the IEP, in accordance with 34 CFR §§ 300.101 and .323. Therefore, MSDE finds a violation occurred concerning this aspect of the allegation.

##### **CORRECTIVE ACTION AND TIMELINE:**

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 noncompliance is corrected in a timely manner.<sup>2</sup> 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. Nicole Green, Compliance Specialist, Family Support and Dispute Resolution, MSDE, to ensure the effective implementation of the action.<sup>3</sup> Ms. Green can be reached at (410) 767-7770 or by email at [nicole.green@maryland.gov](mailto:nicole.green@maryland.gov).

### **Student-Specific**

MSDE requires the BCPS to provide documentation by October 31, 2024, that the BCPS has:

- a. Provided the student adult support as required by the IEP; and
- b. Convened an IEP team meeting to determine whether the violations identified in this Letter of Findings negatively impacted 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 remedies 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.

The BCPS must ensure that the parent is provided with prior 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**

By October 31, 2024, BCPS must determine whether there are other students who attended [REDACTED] during the 2023-2024 school year who were not provided the additional adult support required by their IEP. If there are other similarly situated students, an IEP team meeting must be convened to determine whether there was negative impact to the student's ability to benefit from the education program from any lapse in service. If the team determines that there was a negative impact, it must also determine the amount and nature of compensatory services or other remedies 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.

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 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.

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<sup>2</sup> 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.

<sup>3</sup> 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 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/ra

c: Dr. Myriam Rogers, Superintendent, BCPS  
Charlene Harris, Supervisor of Compliance in the Department of Special Education, BCPS  
Dr. Jason Miller, Coordinator, Special Education Compliance, BCPS  
[REDACTED], Principal, [REDACTED], BCPS  
Nicol Elliott, Section Chief, Monitoring and Accountability, MSDE  
Dr. Paige Bradford, Section Chief, Performance Support and Technical Assistance, MSDE  
Alison Barmat, Branch Chief, Family Support and Dispute Resolution Branch, MSDE  
Nicole Green, Compliance Specialist, MSDE  
Tracy Givens, Section Chief, Dispute Resolution, MSDE  
Rabiatu Akinlolu, Complaint Investigator, MSDE