


May 9, 2025




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

Re: 
Reference: #25-276

Dear Parties:


The Maryland State Department of Education (MSDE), Division of Special Education, 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.

On February 25, 2025, MSDE received a complaint from , hereafter, “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) and related requirements concerning the student.

ALLEGATIONS:

1. The CCPS has not followed proper procedures when using physical restraint and seclusion on November 8, 2024, in accordance with COMAR 13A.08.04.05.
2. The CCPS did not follow proper procedures when disciplinarily removing the student from May 2024 through February 24, 2025, in accordance with 34 CFR §§ 300.530 and .531, COMAR 13A.08.03, and COMAR 13A.05.01.10.

BACKGROUND:

The student is eight years old and is identified as a student with Multiple Disabilities under the IDEA. He attends  School. The student 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. On November 8, 2024, the student was involved in an incident that resulted in the use of physical restraint. The Restraint and Seclusion form reflects the student exhibited distress in the cafeteria, screaming and remaining non-responsive to the staff's efforts to assist him. The student did not engage with staff and was escorted to the school social worker. Although this incident did not result in a restraint, the staff completed a restraint form.

The Restraint and Seclusion form further reflects the social worker offered sensory items and calming techniques, however the student remained agitated, attempting to grab materials and becoming increasingly aggressive. The student was escorted to the "Interim Alternative Classroom to encourage de-escalation in a less stimulating environment." The restraint form also reflects:

- total time and type of restraint;
- preventative strategies implemented or determined inappropriate
- precipitating event
- student behavior and reaction during the restraint
- the name, role, and signature of staff who implemented, and monitored the restrain
- the name and signature of administrator, and parent notification by phone.

The Restraint and Seclusion form reflects an IEP meeting was scheduled for November 12, 2024.

2. On November 8, 2024, the student was involved in a second incident that resulted in the use of physical restraint. The Restraint and Seclusion form reflects the student "had crawled under a desk and began kicking it upward." The student was informed that the behavior was unsafe, and he was asked to move to the area in the room where he could kick the wall. The student "continued kicking upward on the desk posed harm to himself, so he was escorted from under the desk and tried pushing staff to get back under the desk." Once removed from under the desk, "[Student] was screaming and pushing/kicking at classmates. Once the pushing subsided, [staff] attempted to back away. [Student] was grabbing at the mats and pulling them onto his body. We allowed him to do that as a sensory input, and he remained in that space safely."

The incident report also reflects:

- total time and type of restraint;
- Preventative strategies implemented or determined inappropriate
- Precipitating event
- student behavior and reaction during the restraint;
- the name, role, and signature of staff who implemented, and monitored the restrain; and
- the name and signature of administrator, and parent notification by phone.

The Restraint and Seclusion form reflects an IEP meeting was scheduled for November 12, 2024.

3. There is documentation that the staff members who implemented the physical restraints on November 8, 2024, were certified in the appropriate use of restraint.
4. The prior written notice (PWN) generated following an IEP team meeting on November 12, 2024, reflects the IEP team convened and determined that the student meets the eligibility criteria as a student with multiple disabilities under the IDEA.
5. There is no documentation that when the IEP team convened on November 12, 2024, they discussed the restraint on that occurred on November 8, 2024.
6. There is no documentation to support the allegation that the student was secluded.

DISCUSSIONS AND CONCLUSION:

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 harm¹; and
- (ii) Other less intrusive, nonphysical interventions have failed or been demonstrated to be inappropriate for the student.

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 shall be removed as soon as the student no longer poses a threat of imminent, serious physical harm; and 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)

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.

¹Serious 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).

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 must also 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 with oral or written notification within 24 hours, unless otherwise provided for in the student's Behavior Intervention Plan (BIP) or IEP (COMAR 13A.08.04.05A(5)).

If restraint or seclusion is used for a student who has not been identified as a student with a disability, the student shall immediately be referred to the school's Student Support, Section 504, or IEP team. (COMAR 13A.08.04.05C)

Use of Seclusion

The use of seclusion is prohibited in public agencies. (COMAR 13A.08.04.05B)

In this case, the CCPS did not ensure the restraint documentation included the type of restraint used on November 8, 2024. While the student was a student suspected of having a disability, there is no documentation that he was referred to the IEP team after the November 8, 2024, restraint. On November 12, 2024, the IEP team determined the student was eligible for special education services. There is no documentation that during the IEP team meeting, the IEP team discussed the restraint as required by COMAR.

Based on Findings of Fact # 1 through #6, MSDE finds that the CCPS has not followed proper procedures when using physical restraint on November 8, 2024, in accordance with COMAR 13A.08.04.05. Therefore, MSDE finds a violation.

Based on Finding of Fact #6, MSDE finds that the student was not secluded on November 8, 2024, in accordance with COMAR 13A.08.04.05. Therefore, MSDE does not find a violation.

ALLEGATION #2

DISCIPLINARY PROCEDURES

FINDINGS OF FACT:

7. The student was suspended for violating the student code of conduct on May 3, 2024, for one day and May 21, 2024, for two days.
8. During the 2024-2025 school year, the student was suspended for violating the student code of conduct on the following days:
 - September 11, 2024, for two days
 - October 3, 2024, for three days
 - October 10, 2024, for three days

- December 12, 2024, for three days
 - February 20, 2025, for one day
9. On December 17, 2024, the IEP team convened to conduct a manifestation determination. The Manifestation Determination Summary of IEP team meeting form reflects:
- The total out of school suspension days for the 2024-2025 school year was 11
 - The total in school suspension days for the 2024-2025 school year was zero.
 - The team determined compensatory services were required to address his free appropriate public education (FAPE).
 - The IEP team determined comprehensive evaluation was completed and reviewed on November 12, 2024, therefore no additional assessments were required.
 - The team determined a Functional Behavior Assessment (FBA) was required to develop a BIP.
 - The team determined the behavior was a manifestation of the student's disability.
 - The student received no services from December 13 through December 17.
 - The student returned to school following the manifestation determination meeting.
10. On February 25, 2025, the IEP team convened to conduct a manifestation determination. The Manifestation Determination Summary of IEP team form meeting reflects:
- The total out of school suspension days for the 2024-2025 school year was 12.
 - The total in school suspension days for the 2024-2025 school year was zero.
 - The team determined compensatory services were required to address FAPE.
 - The IEP team reviewed the Psychoeducational, Social/Emotional/Behavior assessment completed on November 12, 2024.
 - The team is in the process of completing the FBA. An IEP team meeting is scheduled for March 26, 2025, to review the FBA and if required, develop a BIP.
 - The team determined the behavior was not a manifestation of the student's disability.
 - The student received no services on February 21.

DISCUSSION AND CONCLUSION:

Disciplinary Removal

Within ten school days of the date in which the decision is made to change the placement of a student because of a violation of a code of student conduct, the IEP team must convene to determine whether the student's behavior was a manifestation of the student's disability. If the team determines that the behavior was a manifestation of the student's disability, it must return the student to the educational placement from which the student was removed (34 CFR § 300.530 and COMAR 13A.08.03.08).

If the team determines that the behavior is not a manifestation of the student's disability, the public agency may apply discipline procedures to students with disabilities in the same manner as would be applied to students without disabilities. However, the IEP team must determine the educational services to provide to the student to enable the student to progress in the general curriculum and advance toward achieving the goals of the student's IEP. These services may be provided in an alternative setting. The IEP team must also conduct a functional behavioral assessment and develop a behavior intervention services, as appropriate, that are designed to address the behavior violation so that it does not recur (34 CFR § 300.530 and COMAR 13A.08.03.08).

The IEP team cannot rely on providing compensatory services for a violation of state and federal requirements regarding the provision of services after ten days of disciplinary removal. Services must be determined by the IEP team and provided following the tenth day of removal. If an additional suspension occurs, services must be provided immediately.

Based on Findings of Fact #7 through #10, MSDE finds that the CCPS did not follow proper procedures when disciplinarily removing the student on December 12, 2024, and February 20, 2025, in accordance with 34 CFR §§ 300.530 and .531, COMAR 13A.08.03, and COMAR 13A.05.01.10. The IEP team did not determine the educational services for the student after 10 days of removal. Therefore, MSDE finds a violation.

CORRECTIVE ACTIONS AND 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, the MSDE requires the public agency to provide documentation of the completion of the corrective actions listed below.

MSDE has established reasonable timeframes below to ensure that noncompliance 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 the 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 Branch, MSDE, to ensure the effective implementation of the action.³ Ms. Green can be reached at (410) 767-7770 or by email at nicole.green@maryland.gov.

Student-Specific

MSDE requires the CCPS to provide documentation by July 1, 2025, that the IEP team has convened and determined the amount and nature of compensatory services or other remedies to redress the failure to determine services following the student's suspensions and developed a plan for the provision of those services within one year of the date of this Letter of Findings.

The CCPS 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.

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 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 year to complete. If noncompliance is not corrected in a timely manner, the 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

School-Based

By July 1, 2025, MSDE requires the CCPS to provide documentation of the steps it has taken to ensure that the [REDACTED] staff properly implements the requirements disciplinary procedures under the IDEA and COMAR. These steps must include staff development, as well as tools developed to monitor compliance and document the provision of services.

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. Requests for reconsideration should be sent directly to Tracy Givens, Section Chief, Dispute Resolution at Tracy.Givens@maryland.gov. 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 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 Special Education

ALH/ra

c: Dr. Jeffrey Lawson, Superintendent, CCPS
Dr. Rebecca Miller, Director of Special Education, CCPS
[REDACTED], Principal, [REDACTED] School, CCPS
Alison Barmat, Director, Family Support and Dispute Resolution Branch, MSDE
Dr. Paige Bradford, Section Chief, Performance Support and Technical Assistance, MSDE
Dr. Brian Morrison, Director, Accountability and Data, MSDE
Tracy Givens, Section Chief, Dispute Resolution, MSDE
Rabiatu Akinlolu, Complaint Investigator, MSDE