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July 31, 2008

Ms. Katherine J. Carver  
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Maryland Coalition for Inclusive Education  
7484 Candlewood Road, Suite R  
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Ms. Jane Conner  
Director of Special Education  
Carroll County Public Schools  
125 North Court Street  
Westminster, Maryland 21157

RE: XXXXX  
Reference: #08-081

Dear Parties:

The Maryland State Department of Education, Division of Special Education/Early Intervention 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 our investigation.

**ALLEGATIONS:**

On June 10, 2008, MSDE received a complaint from Katherine Carver, Esq. hereafter, “the complainant,” filed on behalf of the above-referenced student and the student’s mother. In that correspondence, the complainant alleged that the Carroll 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 following allegations:

1. CCPS has not developed an Individualized Education Program (IEP) that addresses the student’s identified behavioral needs since October 2007, in accordance with 34 CFR §300.324;
2. CCPS did not follow proper procedures when using physical restraint with the student, in accordance with COMAR 13A.08.04.05; and

3. CCPS did not provide the parent with a written invitation to the May 9, 2008 IEP team meeting, in accordance with 34 CFR §300.322 and COMAR 13A.05.01.07D.

**INVESTIGATIVE PROCEDURES:**

1. Ms. Kathy Stump, Education Program Specialist, MSDE, was assigned to conduct the investigation of the complaint.
2. On June 12, 2008, MSDE sent a copy of the complaint, via facsimile, to Ms. Jane Conner, Director of Special Education, CCPS.
3. On June 17, 2008, Ms. Dori Wilson, Chief, Complaint Investigation and Due Process Branch, MSDE, spoke with the complainant and clarified the allegations to be investigated.
4. On June 19, 2008, MSDE sent correspondence to the complainant that acknowledged receipt of the complaint and identified the allegations subject to this investigation. On the same date, MSDE notified Ms. Conner of the allegations and requested that her office review the alleged violations.
5. On July 11, 2008, Ms. Stump and Ms. Martha Roulette Arthur, Education Program Specialist, MSDE, conducted a site visit at XXXXXXXXX Elementary School (XXXXXXX ES), to review the student's record, and interviewed the following CCPS staff:
  - a. Ms. Jennifer Branner, Behavior Support Specialist, CCPS;
  - b. Ms. Renee Gallagher, Speech/Language Pathologist, CCPS; and
  - c. Ms. XXXXXXXXXX, Acting Principal, XXXXXXXXXX ES.

Ms. Gretchen Rockafellow, Coordinator of Special Education Services, CCPS, attended the site visit as a representative of CCPS and to provide information on CCPS policies and procedures, as needed. Ms. Rochelle Eisenberg, Attorney for CCPS, also attended the site visit.

6. On July 24, 2008, Ms. Stump conducted a follow-up site visit at the CCPS Central Office to review additional documentation.
7. MSDE reviewed documentation relevant to the findings and conclusions referenced in this Letter of Findings (LOF), which include:
  - a. Correspondence from complainant to MSDE, dated June 6, 2008;
  - b. IEP, dated June 4, 2007;
  - c. IEP, dated March 13, 2008;

- d. Acting Principal's personal notes regarding student-specific matters, dated April 7, 11, and 15, 2008;
- e. Electronic mail (e-mail) correspondence between the student's mother and XXX XXXX ES staff, dated between April 10 and April 18, 2008;
- f. Parent Conference summary, dated April 18, 2008;
- g. E-mail correspondence between the student's mother and XXXXXXXXX ES staff, dated between April 21 and May 5, 2008;
- h. Functional Behavior Assessment and meeting notes, dated May 2, 2008;
- i. Acting Principal's personal notes regarding student-specific matters, dated May 7 and 8, 2008;
- j. E-mail correspondence between the complainant and attorney for CCPS, dated May 7 and 8, 2008;
- k. IEP team meeting notice, dated May 9, 2008;
- l. IEP and meeting summary, dated May 9, 2008;
- m. Behavioral Intervention Plan, dated May 9, June 9, and June 10, 2008;
- n. Prior Written Notice form, dated May 19, 2008;
- o. Report of Seclusion and Physical Restraint forms from April through June 2008;
- p. Student's Spring XXXX ES Discipline Report for the 2007-2008 school year; and
- q. IEP, dated July 22, 2008.

### **BACKGROUND:**

The student is six (6) years old and is identified as a student with a developmental delay under IDEA. The student attends XXXXXX ES, where he receives special education and related services. During the period of time addressed by this investigation, the student's mother participated in the education decision-making process, and was provided with written notice of IEP team decisions and notice of the procedural safeguards, as required (Docs. b, c, l, and q).

### **FINDINGS OF FACT:**

1. The IEP that was in effect at the start of the 2007-2008 school year was developed based upon the evaluative data, which included the results of assessments, teacher observations, and parental input. The IEP contained goals to address the student's identified academic, communication, emotional/social/behavioral, and motor skills needs (Doc. b).
2. From the start of the 2007-2008 school year until October 24, 2007, the documentation indicates that the student did not exhibit any behavioral issues (Doc. p).
3. Between October 24 and December 12, 2007, the documentation indicates that the student exhibited behavioral issues on seven (7) dates. In each of these incidents, the student was removed from his classroom or from classroom activities for short periods of time. On three (3) of those dates, school staff contacted the student's mother via telephone to discuss the behaviors (Doc. p).

4. Following December 12, 2007, there is documentation that the student's behavior improved and there were no further concerns regarding his behavior until April 1, 2008 (Doc. p).
5. On March 13, 2008, the IEP team, including the student's mother, convened to review the student's program and progress. At the meeting, the documentation indicates that the team considered teacher observations, data from the student's related service providers, the student's work samples and classroom performance, parental input, current assessment results, and the student's IEP progress reports. Based on the review of the data, the IEP team revised the student's IEP with goals to address the student's identified academic, communication, emotional/social/behavioral, and motor skills needs (Doc. c).
6. There is no documentation that at the March 13, 2008 meeting, the team specifically discussed or considered the behavioral incidents that occurred between October 24 and December 12, 2007. However, based upon its review of the evaluative data, the team determined that although there was no need to refer the student for a Functional Behavioral Assessment (FBA), "a consult from the Behavior Support Specialist to 'tweak' structures within the inclusive setting should occur on an as needed basis" (Doc. c).
7. Between April 1 and April 18, 2008, the student again began having behavioral issues, which were documented on eight (8) dates. In each of these incidents, the student was removed from his classroom or from classroom activities for short periods of time. On five (5) of those dates, school staff contacted the student's mother via telephone and e-mail to discuss the behaviors and to attempt to identify both the possible causes of the behaviors and positive interventions strategies that could be used to address them (Docs. d, e, and p).
8. In response to the student's escalating behavior, a parent conference was held between the student's mother and school staff on April 18, 2008. The documentation indicates that the group discussed the student's successes, the supports that contributed to the student's success, the possible causes of the student's escalating behavior, and an action plan to address the behaviors. The action plan included positive behavioral interventions and the group agreed to conduct an FBA (Doc. f).
9. Between April 18 and May 9, 2008, the documentation indicates that the student exhibited behavioral issues on eight (8) dates (Doc. p).
10. On April 23, 2008, the student was physically restrained by school staff. The documentation indicates that the use of physical restraint was prompted by the student's "physical attack" against school staff. School staff completed a *CCPS Report of Seclusion or Physical Restraint* for the incident, which includes documentation of all

required information and informed the student's mother of the restraint, as required (Docs. o and p).

11. Following the April 23, 2008 restraint, school staff restrained the student on six (6) additional dates between April 24 and May 7, 2008. The documentation indicates that the use of physical restraint was prompted by the student's "physical attacks" against other students or school staff or by the student's non-compliant behavior that caused him to be a danger to himself. Each of these additional restraint incidents, with the exception of the incidents that occurred on May 1 and May 2, 2008, is documented as required and the student's mother was informed of the restraints (Docs. o and p).
12. In addition to notifying the student's mother regarding the restraint incidents, the documentation indicates that school staff communicated with the student's mother via telephone and e-mail on four (4) different dates during this time period. School staff and the student's mother continued to attempt to identify both the possible causes of the student's escalating behaviors and positive interventions strategies that could be used to address them (Docs. g, i, o, and p).
13. On May 2, 2008, a parent conference that included IEP team members was held. The group discussed the concerns of the student's mother, the student's discipline and attendance records, a list of previous positive interventions that had been used with the student throughout the school year, classroom observations, and the student's strengths. Based upon a review of this information, the group completed an FBA for review at an upcoming IEP team meeting (Doc. h).
14. An expedited IEP team meeting was scheduled for May 8, 2008 to address the student's escalating behaviors. However, the documentation indicates that the meeting was rescheduled, after consulting with the student's mother and the complainant, for May 9, 2008. The student's mother was not provided with a written invitation to this meeting, but there is documentation that the student's mother was able to and did attend the meeting (Docs. j-l, and n).
15. On May 9, 2008, the IEP team, including the complainant and the student's mother, convened to review the FBA and develop a Behavioral Intervention Plan (BIP). The documentation indicates that the team reviewed parental input and the FBA completed on May 2, 2008. Based upon the review of this data, the team developed a BIP and amended the student's IEP to reflect this information. The interventions in the BIP include both positive intervention strategies and consequences, and permit the use of restraint when necessary for "non-compliance that poses a safety risk to self and/or others, including but not limited to running in the classroom or hallways, throwing or knocking over objects with force, causing harm/attempting to cause harm to others (*e.g.* scratching, biting, pinching, hitting, slapping, kicking, etc.)." Neither the BIP nor the amended IEP

specified how often the IEP team would meet to review or revise, as appropriate, the student's IEP and BIP (Docs. l-n).

16. Between May 9, 2008 and the end of the 2007-2008 school year, the documentation indicates that the student had fourteen (14) additional behavioral incidents. In each of these incidents, school staff implemented the interventions in the student's BIP, and in five (5) of these incidents, restraint was utilized. The use of physical restraint was documented by school staff, as required (Docs. o and p).
17. Documentation indicates that on two (2) of dates when restraint was utilized with the student, a CCPS central office Behavior Support Specialist was present and participated in the restraint incidents. The documentation further indicates that while the school-based staff who utilized restraint had been provided with training on the implementation of the regulation regarding student behavior interventions and the appropriate use of restraint, no documentation was provided to verify the report that the CCPS central office staff who utilized restraint had been provided with such training (Doc. p. and Review of personnel records).
18. On July 23, 2008, an IEP team, including the complainant and the student's mother, convened to review the student's program and progress. The documentation indicates that the team reviewed the available data, including information from the student's classroom teacher, the student's IEP progress reports, parental input, and the results of the most recent assessments. Based upon that review, the team revised the student's IEP goals and objectives, revised the student's BIP, and ordered additional assessments to address the student's assistive technology and processing needs. Although no firm date has been set, CCPS staff report that an IEP team meeting to review the results of the assessments will be scheduled upon the completion of those assessments (Doc. q and interview with CCPS staff).

### **DISCUSSION/CONCLUSIONS:**

#### **Allegation #1: IEP that addresses the student's identified behavioral needs**

IDEA requires that each student with a disability be provided with special education and related services that address the student's identified special education and related services needs (34 CFR §300.101). To ensure that the services provided to the student are based upon the identified needs, the IEP team must consider the strengths of the student, the concerns of the parents for enhancing the education of the student, the results of the most recent evaluation, and the academic, developmental, and functional needs of the student. 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).

Based on Finding of Fact #1, MSDE finds that there is documentation that the IEP in effect at the start of the 2007-2008 school year identified the student's academic and behavioral needs and was based upon the evaluative data, which included the results of assessments, teacher reports, and parental input. Based on Findings of Fact #2-4, MSDE finds that from the start of the 2007-2008 school year until December 12, 2007, there is documentation that the student experienced behavioral difficulties on seven (7) different dates.

Based on Findings of Fact #5-6, MSDE finds that although there is no documentation that the IEP team specifically discussed or considered these seven (7) behavior incidents at the IEP team meeting on March 13, 2008, there is documentation that the team considered the evaluative data, which included teacher observations, data from the student's therapist, the student's work samples and classroom performance, parental input, current assessment data, and the student's IEP progress reports, and revised the student's IEP with goals to address the student's identified academic and behavioral needs.

Based on Findings of Fact #7-8 and 12-13, MSDE finds that there is documentation that indicates that following the March 13, 2008 IEP team meeting, when the student's behavioral difficulties began to escalate, school staff and the student's mother worked together to identify both the possible causes of the escalation and positive interventions strategies that could be used to address the behaviors. Further, based on Findings of Fact #8 and 13, MSDE finds that there is documentation that school staff and the student's mother promptly met to discuss and address the behavioral concerns, including ordering an FBA. Based on Findings of Fact #8, 13, and 15, MSDE further finds that there is documentation that the FBA was conducted without delay and the IEP team met shortly after its completion to review the student's IEP and the FBA and to develop a BIP.

Based on Findings of Fact #7-8, 12-13, and 15-16, MSDE finds that there is documentation that the interventions in the student's BIP were implemented and that school staff used positive behavioral interventions and supports and other strategies to address the student's behavior. Moreover, based on Finding of Fact #18, MSDE finds that school staff continue to meet to review and revise the student's IEP and BIP. Therefore, with respect to this allegation, MSDE finds no violation.

**Allegation #2:           Physical Restraint**

Use of physical restraint

Public agencies are prohibited from the use of restraint unless there is an emergency situation and 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 (COMAR 13A.08.04.05). Based on Findings of Fact #10-11, MSDE finds that there is documentation that the use of physical restraint prior to its inclusion in the student's IEP or BIP was prompted by the student's "physical attacks" against other students or school staff and by the student's non-compliant behavior that caused him to be a danger to himself.

Restraint may also be utilized if the student's BIP or IEP describes the specific behaviors and circumstances in which restraint may be used (COMAR 13A.08.04.05). Based on Findings of Fact #1, 5 and 15, MSDE finds that there is no documentation that the student's IEP or BIP included the use of restraint until May 9, 2008. Further, based on Findings of Fact #15-16, MSDE finds that the use of restraint subsequent to its inclusion in the student's BIP was done in accordance with the BIP. Therefore, with respect to the requirement that restraint may only be utilized in an emergency situation or when the student's IEP or BIP permits its use, MSDE finds no violation.

#### Documentation of the use of restraint

Each time a student is restrained, school personnel must document the: (a) other less intrusive interventions that have failed or been determined inappropriate; (b) precipitating event immediately preceding the behavior that prompted the use of restraint; (c) behavior that prompted the use of restraint; (d) names of the school personnel who observed the behavior that prompted the use of restraint; (e) names and signatures of the staff members implementing and monitoring the use of restraint; (f) the type of restraint utilized; (g) length of time in restraint; (h) student's behavior and reaction during the restraint; and (i) name and signature of the administrator informed of the use of restraint. Each time restraint is used, parents must be provided oral or written notification within twenty-four (24) hours, unless otherwise provided for in the student's BIP or IEP (COMAR 13A.08.04.05A).

Based on Findings of Fact #10-11 and 16, MSDE finds that there is documentation that school staff notified the student's mother and documented the required information about each incident where restraint was utilized except those that occurred on May 1, 2008 and May 2, 2008. Therefore, MSDE finds that while CCPS informed the student's mother of these incidents, they did not follow proper procedures when documenting the use of restraint on two (2) occasions.

#### Requirement to meet following the use of restraint

If restraint is used for a student with a disability, and the student's IEP or BIP does not include the use of restraint or seclusion, the IEP team shall meet within ten (10) business days of the incident to consider the need for conducting an FBA, developing appropriate behavioral interventions, and implementing a BIP (COMAR 13A.08.04.05C). Based on Finding of Fact #10 MSDE finds that there is documentation that restraint was utilized for the first time on April 23, 2008. Based on Findings of Fact #1 and 6, MSDE finds that because the student's IEP did not include the use of restraint, school staff were required to convene an IEP team meeting within ten (10) business days of April 23, 2008.

Based on Finding of Fact #13, MSDE finds that school staff conducted a parent conference, including the student's mother and other members of the IEP team, on May 2, 2008, seven (7) business days after the restraint, to address the issues required. However, based on Finding of Fact #15, MSDE finds that school staff did not convene an IEP team meeting until May 9, 2008, twelve (12) business days after the first restraint incident. Therefore, MSDE finds that CCPS did

not follow proper procedures because the IEP meeting was held two (2) days outside of the required timeline.

Requirement to meet to review program when the use of restraint is permitted

If the BIP permits the use of restraint, it must contain information regarding how often the team will meet to review the BIP (COMAR 13A.08.04.05C). Based on Findings of Fact # 15 and 18, MSDE finds that there is no documentation in either the student's IEP or BIP that indicates how often the team will meet to review the BIP. Therefore, with respect to this requirement, MSDE finds a violation.

School personnel training

Each public agency must provide professional development and training to designated school personnel on the appropriate implementation of the policies and procedures and in 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). Further, restraint may only be utilized by school personnel who are trained in its appropriate use (COMAR 13A.08.04.05A).

Based on Finding of Fact #17, MSDE finds that while there is documentation that the school staff who utilized restraint had been provided with training on the implementation of the regulation covering student behavior interventions and the appropriate use of restraint, no documentation was provided to verify the report that the specific CCPS central office staff who utilized restraint had been provided with such training. Therefore, with respect to this requirement, MSDE finds a violation.

**Allegation #3: Meeting notice for May 9, 2008 IEP team**

The public agency is required to take steps to ensure parents have the opportunity to participate in IEP team meetings, which include, among other things, providing them with written notice of the purpose of the meeting. To ensure parent participation, the school system must provide parents with written notice at least ten (10) days in advance of the meeting. However, this notice is not required if the meeting has been expedited to address disciplinary issues (COMAR 13A.05.01.07).

Based on Findings of Fact #11, 14, and 15, MSDE finds that there is documentation that the IEP team meeting on May 9, 2008, was an expedited meeting that was conducted to address disciplinary issues, and therefore written notice to the parent at least ten (10) days in advance was not required. Moreover, based on Finding of Fact #14, MSDE finds that the student's mother, through the complainant, agreed to the date of the meeting and attended. Therefore, MSDE finds no violation with respect to this allegation.

**CORRECTIVE ACTIONS/TIMELINE:**

**Student-specific**

MSDE requires that CCPS ensure that at the IEP team meeting that will be scheduled to review the results of the assessments, the IEP team revises the student's IEP and BIP to include information regarding how often the IEP team will meet to review the BIP. CCPS must provide the student's mother with proper written notice of the determinations made at the IEP team meeting, as required by 34 CFR §300.503, including a written explanation of the basis for the determinations. If the student's mother disagrees with the IEP team's determinations, she maintains the right to request mediation or file a due process complaint, in accordance with IDEA.

**School-specific**

MSDE requires CCPS take steps to determine if the violations regarding the documentation of the use of restraint and the failure to convene an IEP team meeting within ten (10) business days of the use of restraint with a student whose IEP and/or BIP does not include its use are unique to this case, or if they represent a pattern of noncompliance at XXXXXXXXXX ES. If it is determined that a pattern of noncompliance exists with regard to the requirements, CCPS must inform MSDE of the steps it will take to ensure compliance with these regulations, including a description of how CCPS will evaluate the effectiveness of the steps taken.

Additionally, CCPS must provide MSDE with documentation that the specific CCPS central office staff who utilized restraint with the student has been trained on the appropriate implementation of the policies and procedures and in current professionally accepted practices and standards regarding positive behavioral intervention strategies and supports, functional behavioral assessment and behavior intervention planning, exclusion, restraint, and seclusion and the appropriate use of restraint. If no such documentation exists, MSDE requires CCPS to provide professional development and training to the CCPS central office staff person, as required by COMAR 13A.08.04.06.

By November 1, 2008, CCPS shall submit documentation of completion of the required actions. This documentation is to be submitted to this office to: Attention: Chief, Complaint Investigation/Due Process Branch, Division of Special Education/Early Intervention Services, MSDE.

**TECHNICAL ASSISTANCE:**

Technical assistance is available to the parties through Mrs. Martha Roulette Arthur, Education Program Specialist, MSDE. Mrs. Arthur may be contacted at (410) 767-0255.

Please be advised that both parties have the right to submit additional written documentation to this office within fifteen (15) days of the date of this letter if they disagree with the conclusions

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reached in this LOF. The additional written documentation must not have been provided or otherwise available to this office during the complaint investigation and must be related to the issues identified and addressed in the LOF. If additional information is provided, it will be reviewed and MSDE will determine if a reconsideration of the conclusions is necessary. Upon consideration of this additional documentation, this office may leave its findings and conclusions intact, set forth additional findings and conclusions, or enter new findings and conclusions.

Questions regarding the findings, conclusions and corrective actions contained in this letter should be addressed to this office in writing. The student's mother and the school system maintain the right to initiate mediation or a due process hearing, if they disagree with the identification, evaluation, placement, or provision of a free appropriate public education for the student, including issues subject to a State complaint investigation, consistent with IDEA. MSDE recommends that this LOF be included with any request for mediation or due process.

Sincerely,

Carol Ann Baglin, Ed.D.  
Assistant State Superintendent  
Division of Special Education/  
Early Intervention Services

CAB:ks

c:       XXXXXXXXX c/o Katherine Carver, Esq.  
          Charles I. Ecker  
          XXXXXXXXX  
          Dori Wilson  
          Kathy Stump