



**Karen B. Salmon, Ph.D.**  
State Superintendent of Schools

November 9, 2020

Megan Berger, Esq.  
Disability Rights Maryland  
1500 Union Avenue, Suite 2000  
Baltimore, Maryland 21211

Ms. Trinell Bowman  
Associate Superintendent for Special Education  
Prince George's County Public Schools  
John Carroll Administration Building  
1400 Nalley Terrace  
Landover, Maryland 20785

RE: [REDACTED]  
Reference: #21-012

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 September 10, 2020, the MSDE received correspondence from Megan Berger, Esq, hereafter, "the complainant" on behalf of Ms. [REDACTED] and her son, the above-referenced student. In that correspondence, the complainant alleged that the Prince George's County Public Schools (PGCPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to the above-referenced student.

The MSDE investigated the allegation that the PGCPS has not ensured that proper procedures were followed when using seclusion and physical restraint with the student since September 10, 2019, in accordance with COMAR 13A.08.04.

**BACKGROUND:**

The student is seven (7) years old and is identified as a student with an Emotional Disability under the IDEA. He has an Individualized Education Program (IEP) that requires the provision of special education instruction and related services.

The student is placed by the PGCPS at the [REDACTED] a nonpublic, separate, special education school, where he attended until the March 2020 Statewide closure of school buildings and initiation of virtual learning as a result of the national COVID-19 pandemic.

On October 14, 2020, the student's parent declined continued virtual learning. As a result, the student is not receiving educational services at this time and the parent was informed of truancy protocols while the PGCPS makes referrals to other nonpublic, separate, special education schools for placement.

### **FINDINGS OF FACTS:**

1. The student's IEP states that the student demonstrates "emotional outbursts" with a frequency of ten (10) to thirty (30) times per day, including "screaming yelling, punching kicking, throwing chairs, and running through the school building in and out of classrooms, triggered by a refusal to be allowed what he wants to do."
2. At the start of the 2019-2020 school year, the IEP also required the provision of a Therapeutic Behavior Aide (TBA) to support the student with transitions, reduce problem behaviors and increase on-task behaviors. This included escorting the student to a room to calm down and deescalate his behavior in order to return to the classroom. The IEP did require the provision of other less intrusive supports prior to the use of seclusion and restraint. The BIP, revised in December 2019, required staff be instructed in the use of replacement behaviors and response strategies when the student engaged in verbal and physical aggression and elopement. The IEP states that seclusion and restraint will be used only if there is an emergency situation and the behavior interventions are necessary and there is documentation that parent consent was obtained for the use of these interventions.
3. On December 13, 2019, the IEP team considered information that there had been forty-six (46) incidents of physical restraint and sixty (60) incidents of seclusion since the start of the school year. The school staff reported that the student was spending an increasing amount of time outside of the classroom due to physical and aggressive behaviors "constantly occurred throughout the day." The team documented that there was a "lack of responsiveness" to de-escalation techniques and emotion regulation strategies being used.
4. At the December 13, 2019 IEP team meeting, the student's parent reported that she believed that the student's behaviors were increasing in frequency due to staffing changes at the school, including that the student was now receiving adult support from various individuals rather than a specific TBA. The school system staff offered to explore another nonpublic, separate, special education school placement for the student, but the parent rejected the offer. In order to address the increased behaviors, the IEP team added another behavioral goal and supplementary aids and supports. There is no documentation that the IEP team considered the educational and behavioral impact of the changes in 1:1 support.

5. At the December 13, 2019 IEP team meeting, the Behavioral Intervention Plan (BIP) was revised to include the use of a wide range of intervention strategies, including but not limited to, thoughtful staff positioning in key areas throughout the classroom, offering an alternate activity, reminders of social skills, emotion regulation and distress tolerance strategies. It also required that the student be instructed on appropriate ways to seek attention, practice regulation of emotions, express feelings, accept no for an answer and consequences for inappropriate behavior, and advocate for assistance with doing so. The IEP team decided that the effectiveness of the BIP would be considered within four (4) to six (6) weeks.
6. On February 5, 2020, the IEP team reconvened and considered the effectiveness of the interventions being provided. The team considered information that the frequency of the student's behaviors had not decreased. The student's parent reiterated her concern that the same staff member was not providing the one-to-one support each day and her belief that the consistent use of the same staff member was necessary to decrease the student's behaviors. Based on this information, the IEP team decided that the same staff member would provide the one-to-one support for a trial period of six (6) weeks and that the team would consider if that made an impact on the student's behavior. The school-based members of the team again offered to explore another nonpublic school placement and the parent again declined the offer.
7. On March 13, 2020, the IEP team convened and considered that the student's behaviors had "dramatically increased." The team discussed that there had been 382 incidents of verbal aggression, 309 incidents of elopement, 602 incidents of physical aggression, and that the student had been physically restrained and secluded one hundred fourteen (114) times since the start of the school year. The student's parent expressed concern about the use of restraint reporting that the student has been injured and traumatized by the use of restraint and seclusion. The IEP team revised the BIP to require the use of seclusion rather than restraint whenever possible, and proposed additional supports such as increasing the student's pro-social interactions using strategies, providing structured breaks, allowing the student to run laps in the gymnasium, and providing one person to provide the student's individual support.
8. On October 14, 2020, the IEP team convened to consider the student's progress with virtual learning. At that meeting, the student's parent reiterated her concerns that the student had been injured during the use of physical restraint and was traumatized by the experiences. However, there is no documentation that the IEP team considered this information when deciding to continue the use of restraint on the IEP. At that time, the student's parent declined any further educational services until the student can be placed at another nonpublic school.
9. The documentation of the use of seclusion and restraint does not reflect that these interventions were used in circumstances where there was an emergency situation, and the intervention was used to protect the student or other person from imminent, serious, physical harm.

10. The documentation of the use of seclusion and restraint does not reflect that less intrusive, nonphysical interventions had either failed or been determined inappropriate before the behavior intervention was used.
11. The correspondence between school staff and the student's mother indicate that the student sustained physical injuries as a result of the use of seclusion and restraint.

### **CONCLUSIONS:**

The Code of Maryland Regulations (COMAR) mandates the conditions that must be met in order for a public agency to use student behavior interventions, including the use of seclusion and restraint (COMAR 13A.08.04).

The use of seclusion and restraint is prohibited unless there is an emergency situation and the intervention is necessary to protect the student or other person from imminent, serious, physical harm after less intrusive, nonphysical interventions have failed or been determined inappropriate (COMAR 13A.08.04).

The use of seclusion and restraint is permitted only after less restrictive or alternative approaches have been considered and attempted or determined to be inappropriate. Further, the Interventions must be utilized in a humane, safe, and effective manner, without the intent to harm or create undue discomfort, and consistent with known medical or psychological limitations and the student's BIP (COMAR 13A.08.04).

In this case, the complainant alleged the following with respect to the use of seclusion and restraint:

- a. Seclusion and restraint were used in circumstances where there was no emergency situation and the intervention was not necessary to protect the student or other person from imminent, serious, physical harm after less intrusive, nonphysical interventions have failed or been determined inappropriate; and
- b. Seclusion and restraint were used in an inhumane, unsafe, and ineffective manner.

Based on the Findings of Facts #2, #5, #7, #9, and #10, the MSDE finds that the PGCPS did not ensure that proper procedures were followed when using seclusion and restraint with the student since September 10, 2019, in accordance with COMAR 13A.08.04. Therefore, this office finds that a violation occurred with this aspect of the allegation.

Further, based on the Findings of Facts #1 - #11, the MSDE finds that the PGCPS did not ensure that seclusion and restraint were used in an effective manner with the student since September 10, 2019, in accordance with COMAR 13A.08.04. Therefore, this office finds that a violation occurred with respect to this allegation.

### **CORRECTIVE ACTIONS/TIMEFRAMES:**

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.

The MSDE has established reasonable timeframes below to ensure that noncompliance is corrected in a timely manner.<sup>1</sup> 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 timeframes below may not be met, or if either party requires technical assistance they should contact Dr. Nancy Birenbaum, Compliance Specialist, Family Support and Dispute Resolution Branch, MSDE, to ensure the effective implementation of the action.<sup>2</sup> Dr. Birenbaum can be reached at (410) 767-7770.

### **Student Specific**

The MSDE requires the PGCPS to provide documentation that the IEP team has reviewed and revised the IEP and BIP to ensure that they contain supports to be used to both prevent and de-escalate the student's behaviors. The PGCPS must also provide documentation that the IEP team has considered the effectiveness of those supports throughout the remainder of the 2019-2020 school year, and reviewed and revised the IEP and BIP, as appropriate, based on the data.

The MSDE also requires the PGCPS to provide documentation that the IEP team has considered the parent's concerns about the impact of the use of seclusion and restraint on the student and determines the counseling or other services needed to redress the violations and to address those concerns.

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<sup>1</sup> The United States Department of Education, Office of Special Education Programs (OSEP) requires that the public agency correct noncompliance in a timely manner, which is as soon as possible within one (1) year from the date of identification of the noncompliance, unless providing additional time is appropriate, such as for example when it is appropriate to provide compensatory services to a student over a period of more than one (1) year. 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.

<sup>2</sup> The MSDE will notify the public agency's Director of Special Education of any corrective action that has not been completed within the established timeframe.

## **System-Based**

The MSDE requires the PGCPS to provide documentation of the steps taken to ensure that proper procedures are being followed in the use of seclusion and restraint of students placed by the school system at the [REDACTED]. The documentation must include a description of how the school system will evaluate the effectiveness of the steps taken and monitor to ensure that the violations do not recur.

The MSDE has established reasonable timeframes below to ensure that noncompliance is corrected in a timely manner.<sup>3</sup> 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 timeframes below may not be met, or if either party requires technical assistance they should contact Dr. Nancy Birenbaum, Compliance Specialist, Family Support and Dispute Resolution Branch, MSDE, to ensure the effective implementation of the action.<sup>4</sup> Dr. Birenbaum can be reached at (410) 767-7770.

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.

The parent and the school system 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.

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<sup>3</sup> The United States Department of Education, Office of Special Education Programs (OSEP) requires that the public agency correct noncompliance in a timely manner, which is as soon as possible within one (1) year from the date of identification of the noncompliance, unless providing additional time is appropriate, such as for example when it is appropriate to provide compensatory services to a student over a period of more than one (1) year. 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.

<sup>4</sup> The MSDE will notify the public agency's Director of Special Education of any corrective action that has not been completed within the established timeframe.


Megan Berger, Esq.  
Ms. Trinell Bowman  
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The MSDE recommends that this Letter of Findings be included with any request for mediation or a due process complaint.

Sincerely,

Marcella E. Franczkowski, M.S.  
Assistant State Superintendent  
Division of Early Intervention and Special Education Services

MEF: sf

c:   
Monica Goldson  
Barbara VanDyke  
Gail Viens  
Dori Wilson  
Anita Mandis  
Sharon Floyd  
Alexandra Cambria  
Holly Powell