



Mohammed Choudhury  
State Superintendent of Schools

July 22, 2022

Ms. Debrah Martin  
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Ms. Trinell Bowman  
Associate Superintendent-Special Education  
John Carroll Center  
1400 Nalley Terrace  
Landover, MD 20785

RE: [REDACTED]  
Reference: #22-164

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 May 25, 2022, the MSDE received a complaint from Ms. Debrah Martin hereafter, “the complainant,” on behalf of 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 following allegations:

1. The PGCPS has not ensured that the decision made by the Individualized Education Program (IEP) team to increase counseling services on March 24, 2022, has been implemented, in accordance with 34 CFR §§300.101 and .323.
2. The PGCPS has not followed proper procedures when conducting a re-evaluation of the student, since January 2022, in accordance with 34 CFR §§300.303 - .306, and COMAR 13A.05.01.06.

3. The PGcps has not ensured that the student has been consistently provided with the special education instruction, supports, and related services required by the IEP since May 2021, in accordance with 34 CFR §§300.101 and .323. Specifically, the following was alleged:
  - a. The student was not provided with appropriate specialized instruction.
  - b. The student was not provided with crisis intervention by the primary provider identified in his IEP; and
  - c. The student was not provided with counseling services.
4. The PGcps has not developed and implemented an IEP that addressed the student's behavior and social-emotional needs since June 2021, in accordance with 34 CFR §§300.101 and .324.
5. The PGcps did not ensure that the IEP team considered the parent's concerns regarding self-regulation interventions at the IEP meetings held on March 24, April 25, and May 24, 2022, in accordance with 34 CFR §300.324.
6. The PGcps did not ensure that the decisions regarding recovery services made on October 18, 2021, were consistent with the needs of the student, in accordance with 34 CFR §300.324.
7. The PGcps did not provide proper written notice of the IEP team's decisions arising from the IEP team meeting in April 2022, and May 2022, in accordance with 34 CFR §300.503.
8. The PGcps did not follow proper procedures when using physical restraint with the student on March 17, 2022, and when using seclusion with the student since September 2021, in accordance with COMAR 13A.08.04.05.

**BACKGROUND:**

The student is nine years old and is identified as a student with Traumatic Brain Injury under the IDEA. He attends the [REDACTED] School of Prince George's County, a nonpublic separate special education school where he is placed by the PGcps and has an IEP that requires the provision of special education instruction and related services.

**ALLEGATION #1:**

**IMPLEMENTATION OF IEP TEAM DECISIONS**

**FINDINGS OF FACTS:**

1. On March 24, 2022, the IEP team convened to review “discuss restraint and possible update to the Behavior Intervention Plan.” The Prior Written Notice (PWN) generated following the meeting reflects that the IEP team proposed an increase in the student’s counseling services. However, the PWN further reflects the student’s “counseling will remain at one hour a week, but the team will reconvene at a later date to determine if an increase is warranted.”
2. There is documentation that the IEP team reconvened on April 25, 2022 and determined that the student’s counseling services remained appropriate.

**CONCLUSION:**

Based on the Findings of Facts #1 and #2, the MSDE finds that there is no documentation to support the complainant's allegation that the student’s counseling services were increased at the March 24, 2022, IEP meeting and not implemented accordingly, in accordance with 34 CFR §§300.101 and .323. Therefore, this office does not find that a violation has occurred with respect to this allegation.

**ALLEGATION #2:**

**RE-EVALUATION PROCEDURES**

**FINDING OF FACT:**

3. On January 24, 2021, the IEP team convened to review “determine assessment needs.” The PWN generated following the meeting reflects that the team proposed “no additional assessments were necessary in order to continue eligibility for special education services.” The IEP team determined that based upon 2019 psychological and educational assessments were “commensurate” with his “academic progress and present levels.” The team at the [REDACTED] School reviewed his progress with the IEP team and indicated the student was making “good progress across academics and behavioral areas of functioning.” In addition to the 2019 assessments the IEP team considered “related services, FBA/BIP, IEP progress reports, attendance, behavioral data, input from the school team and parents.” There is no documentation of the IEP team’s final eligibility classification.

**CONCLUSION:**

Based on the Findings of Fact #3, the MSDE finds that the PGCPs has not followed proper procedures when conducting a re-evaluation of the student, since January 2022, in accordance with 34 CFR §§300.303 - .306, and COMAR 13A.05.01.06. Therefore, this office finds that a violation has occurred with respect to this allegation.

**ALLEGATION #3:                               PROVISION OF SPECIALIZED INSTRUCTION, CRISIS  
INTERVENTION, AND COUNSELING**

**FINDINGS OF FACTS:**

4. The student's IEP in effect in May 2021, was developed on July 13, 2020, and requires that the student be provided with 29 hours per week of specialized instruction outside of the general education classroom, one hour per week of counseling services in small group or individually, and weekly crisis intervention provided primarily by the "school based mental health provider" or psychologists, school social workers, or school counselors. The IEP requires "crisis intervention as needed to prevent crisis, understand crisis when it occurs, and de-escalate and re-enter the instructional setting."
5. There is documentation that the student received weekly group counseling services virtually from May 6, 2021, to June 14, 2021.
6. The student's IEP developed on June 8, 2021, requires that the student be provided with 29 hours per week of specialized instruction outside of the general education classroom, one hour per week of counseling services in small group or individually, and weekly crisis intervention provided primarily by the school social worker or the 'IEP Team.'" The IEP requires "crisis intervention as needed to prevent crisis, understand crisis when it occurs, and de-escalate and re-enter the instructional setting."
7. There is documentation that the student received weekly group counseling services from September 9, 2021, to April 26, 2022.
8. There is documentation that the student received specialized instruction outside of the general education setting since May 2021, as required by his IEP.
9. There is no documentation that the student received weekly crisis intervention by the required providers since May 2021, as indicated by his IEP.

**CONCLUSIONS:**

Based on the Findings of Facts #4 - #8, the MSDE finds that the PGCPs has ensured that the student has been consistently provided with specialized instruction and counseling services as

required by the IEP since May 2021, in accordance with 34 CFR §§300.101 and .323. Therefore, this office does not find that a violation has occurred with respect to this aspect of the allegation.

Based on the Findings of Facts #4, #6, and #9, the MSDE finds that the PGCPs has not ensured that the student has been consistently provided with crisis intervention as required by the IEP since May 2021, in accordance with 34 CFR §§300.101 and .323. Therefore, this office finds that a violation has occurred with respect to this aspect of the allegation.

**ALLEGATION #4: AN IEP THAT ADDRESSES THE STUDENT’S BEHAVIORAL AND SOCIAL/EMOTIONAL NEEDS**

**FINDINGS OF FACTS:**

10. The student’s IEP developed on June 8, 2021, reflects that he has identified needs in the areas of “math calculation, written language expression, self-management, and social interaction skills.” The IEP includes annual goals, specialized instruction, supports, and related services to improve the student’s skills in these areas. The IEP requires specialized instruction outside of general education and one hour per week of counseling services in small groups or individually. The IEP requires the following social/behavioral supports: crisis intervention weekly as needed to prevent or understand crisis, a daily behavior management system, weekly social skills training, daily home-school communication system, daily encourage/reinforce appropriate behavior in academic and nonacademic setting, daily frequent eye contact, and daily proximity control.
11. The student’s IEP, dated June 8, 2021, reflects that his present level of performance in social interaction skills is “below age level expectancy.” It reflects that during virtual instruction the student was very social, sought peer interactions, and had a stronger ability to interact appropriately with peers during group counseling sessions. The student requires support refraining from negative peer interactions, and “peer back and forth”. The student’s annual social-interaction goal states “by June 7th, 2022, the student will display appropriate and positive play skills, peer relations and cooperative learning throughout the school day in 8 out of 10 trials.”
12. The student’s IEP, dated April 25, 2022, reflects that his present level of performance in self-management is “below age expectancy.” It reflects that during virtual instruction the student could consistently participate in “brain breaks”. The student requires support remaining focused and transitioning between activities. The student’s annual self-management goal states “by June 7th, 2022, the student will remain on task and complete all assigned work on a daily basis with 80% accuracy.”

13. The student's IEP developed on April 25, 2022, reflects that he has identified needs in the areas of "math calculation, reading comprehension, written language expression, self-management, and social interaction skills." The IEP includes annual goals, specialized instruction, supports, and related services to improve the student's skills in these areas. The IEP required specialized instruction outside of general education and thirty minutes per week of counseling services in a group and thirty minutes per week individually. The IEP further required the following social/behavioral supports: crisis intervention weekly as needed to prevent or understand crisis, a daily behavior management system, weekly social skills training, daily home-school communication system, daily encourage/reinforce appropriate behavior in academic and nonacademic setting, daily frequent eye contact, and daily proximity control.
14. The student's IEP, dated April 25, 2022, reflects that his present level of performance in social interaction skills is "below age level expectancy." It reflects that the student can "easily articulate an understanding of accountability and understands behavior expectations in the classroom." The student requires support refraining from instigating verbal negative peer interactions and escalating to physical aggression with staff. The student's annual social-interaction goal states "by April 24, 2023, the student will demonstrate age-appropriate social and communication skills with both peers and adult authority figures throughout the school day averaging 4 out of 5 opportunities, as measured by CASE Point Sheets, Staff Observation, Student Self Report, Behavioral and Disciplinary Records."
15. The student's IEP, dated April 25, 2022, reflects that his present level of performance in self-management is "below age expectancy." It reflects the student can "engage and comply in individual counseling sessions, follow instructions on preferred and nonpreferred activities, and communicate effectively with peers. The student requires support with self-regulation, waiting for assistance in the academic setting, refraining from eloping, and physical and verbal aggression. The student's annual self-management goal states "by April 24, 2023, the student will remain in his assigned area, complete tasks, and take class direction from teaching staff on a daily basis for a minimum of 4 out of 5 opportunities, as measured by CASE Point Sheets, Staff Observation, Student Self Report, Behavioral and Disciplinary Records."

**CONCLUSION:**

Based on the Findings of Facts #10 - #15, the MSDE finds that the PGCPs has ensured that the IEP developed for the student addresses his behavioral and social/emotional needs since June 2021, in accordance with 34 CFR §§300.101 and .324. Therefore, this office does not find that a violation has occurred with respect to this allegation.

**ALLEGATION #5:**

**ADDRESSING THE CONCERNS OF THE PARENT**

**FINDINGS OF FACTS:**

16. On March 21, 2022, the IEP team convened to review “discuss restraint and possible update to the Behavior Intervention Plan.” The PWN dated March 24, 2022, reflects that the IEP team proposed “adding restraint to Drake's IEP, an increase in counseling services. and an update to the behavior intervention plan.” The IEP team discussed the increase in unsafe classroom behaviors by the student. The parents stated, “they were not in favor of adding restraint to the IEP” and that the student was no longer engaged in private counseling. There is no documentation that the parents raised concerns about the student’s self-regulation interventions.
17. On April 25, 2022, the IEP team convened for the student’s annual IEP review. The PWN generated following the meeting reflects that the parents requested a self-regulation intervention be added to the IEP. The IEP team declined to include such an intervention. The team declined the intervention because an updated Functional Behavior Assessment (FBA) is needed due to his increase in physical aggression and the increase in the use of physical restraint. The IEP team “deferred the discussion until the next meeting on May 2 to determine assessment eligibility.”
18. On May 2, 2022, the IEP team convened to finalize the review of the student’s IEP and determine the need for assessment data. The PWN generated following the meeting reflects the team proposed to finalize the IEP based on the discussions of the April 25, 2022, meeting. Additionally, the team proposed additional assessments including an FBA. There is no documentation that the IEP team discussed the parents request for self-regulation interventions.
19. On May 26, 2022, the IEP team convened to discuss a safety plan for the student. The PWN generated following the meeting reflects that the IEP team proposed a safety plan to encourage the student to return to school. The student has not attended school since early May 2022. The parents were provided with the proposed safety plan at the meeting. The parent’s advocate requested a self-regulation intervention to be included in the student’s IEP. The PGCPs members of the IEP team reiterated the need to complete an updated FBA to put the most effective interventions in place. The parent, through her advocate, disagreed with this decision.

**CONCLUSION:**

Based on the Findings of Facts #16 - #19, the MSDE finds that the PGCPs has ensured that the IEP team considered the parent's concerns regarding self-regulation interventions at the IEP

meetings held on March 24, April 25, and May 24, 2022, , in accordance with 34 CFR §300.324. Therefore, this office does not find that a violation has occurred with respect to this allegation.

**ALLEGATION #6: DECISION REGARDING RECOVERY SERVICES**

**FINDINGS OF FACT:**

20. On October 18, 2021, the IEP team convened to discuss the educational impact of “school closure and distance learning” during the COVID 19 pandemic. The PWN generated following the meeting reflects that the IEP team proposed that the student suffered no educational impact as a result of school closures and the transition to virtual learning. The IEP team reviewed service logs demonstrating consistent provision of IEP services, the Individual Continuity of Learning Plan implemented during distance learning from April 14, 2020, to June 8, 2020, the student’s current IEP, classroom based assessments demonstrating that the student is “capable of completing and passing his work with the support of accommodations”, and iReady intervention data prior to the COVID-19 pandemic, and current data demonstrating continued growth. The parents were informed “they can request an IEP meeting at any time to discuss the need for recovery or compensatory services.”

**CONCLUSION:**

Based on the Findings of Facts #20, the MSDE finds that the PGCPs has ensured that the decisions regarding recovery services made on October 18, 2021, were consistent with the needs of the student, in accordance with 34 CFR §300.324. Therefore, this office does not find that a violation has occurred with respect to this allegation.

**ALLEGATION #7: PROVISION OF PRIOR WRITTEN NOTICE**

**FINDINGS OF FACTS:**

21. There is documentation that the PWN for the April 25 and May 2, 2022, IEP team meeting were emailed to the parent on May 18, 2022.

**CONCLUSION:**

Based on the Findings of Facts #21, the MSDE finds that the PGCPs did provide proper written notice of the IEP team’s decisions arising from the IEP team meeting in April 2022 and May 2022, in accordance with 34 CFR §300.503. Therefore, this office does not find that a violation has occurred with respect to this allegation.



**ALLEGATION #8:**

**PHYSICAL RESTRAINT AND SECLUSION**

**FINDINGS OF FACTS:**

22. The “Non-Behavior Event Report” dated March 14, 2022, reflects that the student was sent to the “reflection room” after an altercation with a peer. There is no documentation regarding what occurred to the student while he was in the “reflection room.”
23. The “Incident Report” dated March 17, 2022, reflects that physical restraint was used to protect staff from imminent danger of serious physical harm. There is no documentation of the length of the restraint. The report further indicated that the parent picked the student up from school and was notified of the restraint.
24. On March 21, 2022, the IEP team convened to discuss “restraint and possible update to the BIP.” The PWN generated following the meeting reflects that the student was physically restrained on March 17, 2022. The IEP team proposed adding restraint to the student’s IEP, an increase in counseling services, and updating his BIP. The parents “were not in favor of adding restraint to the IEP.”
25. The “Incident Report” dated March 25, 2022, reflects seclusion was used to protect a peer from “imminent danger of serious physical harm” from the student. There is documentation of the length of the seclusion, the student’s behavior while secluded, and the monitoring of the student while secluded by staff members. The parent arrived shortly after the incident and was notified of the seclusion.
26. On March 29, 2022, the student was involved in an incident that resulted in a physical restraint and removal of the student to the “reflection room”. The report reflects that the staff member placed the student in a “bear hug” to prevent the student from harming another student. The school staff “monitored” the student in the reflection room. There is no documentation of the use of the reflection room to seclude the student, the length of the time the student was in the bear hug or the “reflection room,” and no documentation of the provision of written or oral notification to the parents within twenty-four hours.
27. On April 5, 2022, the IEP team convened to discuss “physical restraint used the week of March 21, 2022.” The PWN generated following the meeting reflects the parents did not participate in this meeting. The IEP team proposed adding restraint to the student’s IEP, which was previously denied by the parent, increase counseling services, and update the BIP. The team determined that the BIP was current and addressed the student’s physical behaviors. The team also determined that his counseling services

would not be increased. There is no documentation that the team discussed the use of seclusion or restraint during the March 25 and 29, 2022 incidents.

**CONCLUSION:**

Based on the Findings of Facts #22 - #27, the MSDE finds that the PGCPs did not follow proper procedures when using physical restraint with the student on March 17, 2022, and when using seclusion with the student since September 2021, in accordance with COMAR 13A.08.04.05. Therefore, this office finds that a violation has occurred with respect to 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, the MSDE requires the public agency to provide documentation of the completion of the corrective actions listed below.

The MSDE has established reasonable time frames below to ensure that non-compliance 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 time frames below may not be met, or if either party seeks technical assistance, they should contact Diane Eisenstadt, Compliance Specialist, Family Support and Dispute Resolution Branch, MSDE, to ensure the effective implementation of the action.<sup>2</sup> Ms. Eisenstadt can be reached at (410) 767-7770 or by email at [Diane.Eisenstadt@maryland.gov](mailto:Diane.Eisenstadt@maryland.gov).

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<sup>1</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, 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.

### **Student-Specific**

The MSDE requires the PGCPs to provide documentation that:

- a. The IEP team convened to complete the re-evaluation, determine eligibility, and revise the IEP consistent with the data and has determined the services, or other remedy, needed to remediate the violation.
- b. The student is being provided with crisis intervention as required by his IEP.
- c. The IEP team has convened to consider the need for more appropriate behavior interventions to address the student's behaviors, as determined by the IEP team.
- d. The IEP team has convened to determine the amount and nature of compensatory services or other remedy to redress the lack of provision of crisis intervention and the inappropriate use of restraint and seclusion for the student and developed a plan for the provision of those services within one year of the date of this Letter of Findings.

The PGCPs must ensure that the parent is provided with 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**

The MSDE requires the PGCPs to provide documentation by October 1, 2022, of the steps it has taken to ensure that the staff responsible for the PGCPs students at The [REDACTED] School properly implements the requirements for re-evaluating students, and the use of restraint and seclusion under the IDEA. The documentation must include a description of how the PGCPs will evaluate the effectiveness of the steps taken and monitor to ensure that the violations do not recur. The PGCPs must provide monitoring reports to the MSDE on December 1, 2022, March 1, 2023, and June 1, 2023 reflecting compliance with requirements for re-evaluation and the use of restraint and seclusion pursuant to the IDEA and COMAR. Monitoring must include the submission of completed restraint and seclusion forms.

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.

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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. 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/Special Education Services

MEF/tg

c: Monica Goldson  
Barbara VanDyke  
Monica Wheeler  
Alison Barmat  
Diane Eisenstadt  
Gerald Loiacono  
Tracy Givens