



Mohammed Choudhury
State Superintendent of Schools

February 6, 2023



Ms. Chris Wittle
Director of Special Education
Carroll County Public Schools
125 North Court Street
Westminster, Maryland 21157

RE: [REDACTED]
Reference: #23- 111

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 December 8, 2022, MSDE received a complaint from Ms. [REDACTED] hereafter, “the complainant,” on behalf of her son, the above-referenced student. 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. The CCPS has not followed proper procedures when using physical restraint and seclusion with the student since December 9, 2021, in accordance with COMAR 13A.08.04.05.
2. The CCPS has not ensured that the student has been consistently provided with the special education support, specifically the one-on-one adult support, as required by the Individualized Education Program (IEP) since the start of the 2022- 2023 school year, in accordance with 34 CFR §§300.101 and .323.

BACKGROUND:

The student is ten years old and is identified as a student with Autism under the IDEA. He attends [REDACTED] a nonpublic school where he is placed by the CCPS. He has an IEP that requires the provision of special education instruction and related services.

ALLEGATION #1: PHYSICAL RESTRAINT AND SECLUSION

FINDINGS OF FACTS:

1. The student's IEP, developed on June 3, 2021, does not include the use of restraint or seclusion for the student.
2. On December 15, 2021, the student was restrained by staff after they noticed that the student had paint in and around his mouth. The "Observation Sheet for Restraint/ Seclusion" generated following the restraint incident reflects that the student was in "imminent, serious physical harm to self" when the school staff observed "paint marks on both sides of the student's mouth and inside his mouth." Staff at the student's school contacted Poison Control, who instructed them "listen to the student's lungs ASAP." Following the staff's attempts to assess the student, the "student became extremely distraught, pushing away staff, kicking, hitting, and refusing medical evaluation." The school's Assistant Behavior Specialist (ABS) attempted to soothe the student through the use of a play stethoscope, watching Ipad videos, and consoling the student verbally. The student continued to kick and push the staff away. When these attempts were unsuccessful, staff properly trained in the use of restraint utilized a "seated hold" for "120 seconds."
3. On December 22, 2021, the IEP team met to review the use of restraint with the student. The prior written notice (PWN) generated following the meeting reflects that the IEP team agreed that the incident that took place on December 15, 2021, was an isolated incident and did not require a change to the student's IEP.
4. On January 14, 2022, the student was again restrained by staff at his school following the parent's request to administer a COVID-19 test. The "Observation Sheet for Restraint/ Seclusion" form generated following the restraint incident reflects that the student may have been recently exposed to COVID-19 as a result of close contact with another student. There is no documentation that the student was in an agitated state prior to the staff attempting to administer the test. The documentation does, however, reflect that the student responded to the test by hitting and scratching staff members. The form states that "staff attempted to soothe and talk to the student and explain what was happening, but physical restraint was necessary to complete the test." There is documentation that staff properly trained in the use of restraint utilized a "child control" hold for "300 seconds." There is no explicit documentation that the student faced imminent, serious physical harm to himself or others before or during the administration of the COVID-19 test.
5. On January 24, 2022, the IEP team met to consider the need for an updated Functional Behavior Assessment (FBA), discuss behavioral interventions for the student, and the need to update the student's Behavior Intervention Plan (BIP). Due to an increase in interfering behaviors, the IEP team recommended that an FBA be conducted for the student, and his BIP should be revised accordingly.
6. On February 7, 2022, the student was again restrained by staff at his school following a parent's request to administer a COVID-19 test. The "Observation Sheet for Restraint/ Seclusion" form generated following the restraint incident reflects that the student may have been recently exposed to COVID-19 as a result of close contact with a COVID-19-positive individual. There is no documentation that the student was in an agitated state prior to the staff attempting to administer the test. The documentation does, however, reflect that the student was "crying, flailing [his] body, and attempting to get away." The form states that staff first utilized "showing empathy, communicating expectations, positive feedback, and the removal of audience." There is documentation that staff properly trained in the use of restraint utilized a "child control" hold for "300 seconds." There is no description of why the student faced an imminent threat prior to the staff

- initiating the test or if halting the test would have de-escalated the student.
7. There is no documentation that the IEP team met within ten business days of the February 7, 2022, restraint incident to review the incident of restraint and discuss the student's need for behavioral interventions as a result.
 8. On April 12, 2022, the IEP met to review and revise the student's IEP. During the IEP team meeting, the IEP team accepted updating the present level of performance for Behavioral- Self-management. They also accepted updating the Special Consideration section for behavior interventions. The updated FBA and updated BIP were reviewed. The updated BIP requires restraint to be used as a "last resort for aggression and self-injurious behavior."
 9. On May 19, 2022, the student was again restrained by staff at his school in response to an altercation with a peer. The "Observation Sheet for Restraint/ Seclusion" generated following the restraint incident reflects that the "student eloped from his area in the classroom and aggressed towards a peer." The form states that the staff first utilized "redirection, proximity control, blocking, and hand-over-hand assistance." The form further reflects that the student was in "imminent serious physical harm to another student" when he "grabbed [a] peer near [the] face/neck area." There is documentation that staff properly trained in the use of restraint utilized a "child control" hold for "45 seconds."
 10. On November 10, 2022, the student was escorted to the "Resource Room" by a staff member at his school in response to a behavioral incident.
 11. Video footage of the student near/around/in the resource room demonstrates that the student was removed from the classroom for approximately two hours following the incident. During the majority of this time, the staff member was either in the room, stood outside of the room with the door open, or where the student did not attempt to leave the room. There were short periods of time when the student left the room and was redirected by staff to return. There was a brief period, however, where the student was in the room alone, with the staff member outside of the door, when the student attempted to exit the room, and the staff member prevented him from leaving by pulling the door closed.
 12. There is no documentation that the IEP team met within 10 days of the incident to review the student's behavior plan, discuss the need for a new functional behavioral assessment, discuss the behavior that prompted the use of seclusion, and inform the parent of the seclusion. While the student was visible to staff during the time that he attempted to leave the room, there were brief moments where it was unclear if the school staff had an adequate view of the student from all angles.
 13. The IEP team met on December 16, 2022, and January 12, 2023, to consider data collection for the discussion and update of the behavioral intervention plan, and the frequency and duration of which the student is outside the classroom. The IEP team also determined that physical restraints should be part of the student's IEP but that seclusion should not be part of the IEP.

DISCUSSIONS/CONCLUSIONS:

Use of Physical Restraint

The use of physical restraint is prohibited in public agencies and nonpublic schools unless there is an emergency situation and physical 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. If the use of physical restraint is included on the student's BIP or IEP, the student's BIP or IEP must describe specific behaviors and circumstances in which physical restraint may be used, consistent with COMAR 13A.08.04.05A(1)(a). Schools must ensure that parental consent is obtained prior to including restraint in a student's IEP (COMAR 13A.08.04.05C(6)(a)).

Physical restraint shall be removed as soon as the student is calm and may not exceed thirty minutes (COMAR 13A.08.04.05A(1)(e)). When utilizing physical restraint, school personnel may not place a student in a face-down position. School personnel may not place a student in any other position that will obstruct the student's airway or otherwise impair the student's ability to breathe. School personnel may not place a student in a position that will obstruct a staff member's view of the student's face, restrict the student's ability to communicate distress, or place pressure on the student's head, neck, or torso. School personnel may not straddle the student's torso (COMAR 13A.08.04.05A(1)(f)).

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 shall 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 oral or written notification within twenty-four hours, unless otherwise provided for in the student's BIP or IEP (COMAR 13A.08.04.05A(5)).

Requirement to Meet Following the Use of Restraint

If restraint is used, and the student's IEP or BIP does not include the use of restraint, the IEP team shall meet within ten business days of the incident to consider the need for conducting a Functional Behavior Assessment (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)).

Training of School Personnel in the Proper Use of Physical Restraint

Each public agency must provide professional development and training to designated school personnel on the appropriate implementation of the policies and procedures related to the use of restraint. The professional development and training must also include 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(1), (3)).

The training in current professionally accepted practices and standards regarding positive behavior interventions strategies and supports must include methods for identifying and defusing potentially dangerous behavior, FBA and BIP planning, exclusion, restraint and alternatives to restraint, seclusion, and symptoms of physical distress and positional asphyxia (COMAR 13A.08.04.06C(3)). Professional development

shall include a written examination and a physical demonstration of proficiency in the described skills and competencies (COMAR 13A.08.04.06C(4)).

December 15, 2021 Restraint

The restraint that took place on December 15, 2021, was in response to an emergency situation involving the student. The school staff was following the directive from Poison Control to listen to the student's lungs, confirming that the student was in possible imminent, serious, physical harm to himself. Properly trained staff conducted the approved hold. The hold was correctly documented, and an IEP team meeting was held within ten days of the restraint to discuss the circumstances of the restraint.

Based upon the Findings of Facts #1- #3, MSDE finds that the CCPS has followed proper procedures when using physical restraint with the student on December 15, 2021, in accordance with COMAR 13A.08.04.05. Therefore, this office does not find that a violation has occurred with respect to this aspect of the allegation.

January 14, 2022 Restraint

The restraint that took place on January 14, 2022, was in response to the administration of a COVID-19 nasal swab. This nasal swab was performed at the request of the parent. The COVID-19 nasal swab was not in response to an emergency situation. Therefore, the student did not pose a threat of imminent, serious, physical harm to himself. Properly trained staff conducted the approved hold. The hold was correctly documented, and an IEP team meeting was held within ten days of the restraint to discuss the circumstances of the restraint.

Based upon the Findings of Facts #1, #4, and #5, MSDE finds that the CCPS has not followed proper procedures when using physical restraint with the student since December 9, 2021, in accordance with COMAR 13A.08.04.05. This was because the restraint was not conducted in response to a threat of imminent, serious, physical harm. Therefore, this office does find that a violation has occurred with respect to this aspect of the allegation.

February 7, 2022 Restraint

The restraint that took place on January 14, 2022, was in response to the administration of a COVID-19 nasal swab. This nasal swab was performed at the request of the parent. The insertion of the COVID-19 nasal swab was not in response to an emergency situation. Therefore, the student was not in possible imminent, serious, physical harm to himself or others prior to staff action. Properly trained staff conducted the approved hold. The hold was correctly documented. However, an IEP team meeting was not held within ten days of the restraint to discuss the circumstances of the restraint.

Based upon the Findings of Facts #1, #6, and #7, MSDE finds that the CCPS has not followed proper procedures when using physical restraint with the student since December 9, 2021, in accordance with COMAR 13A.08.04.05. Therefore, this office does find that a violation has occurred with respect to this aspect of the allegation.

May 19, 2022 Restraint

The restraint that took place on May 19, 2022, was in response to an emergency situation involving the student and a peer. The description of the incident indicated that the restraint was necessary to protect the student and peer from imminent, serious, physical harm and that other less intrusive interventions were not possible. Properly trained staff conducted the approved hold. The hold was correctly documented. The IEP team added the use of restraint to the student's BIP in April 2022. The IEP team will meet annually to review or revise, as appropriate, the student's IEP and BIP.

Based upon the Findings of Facts #8 and #9, MSDE finds that the CCPS has followed proper procedures when using physical restraint with the student since December 9, 2021, in accordance with COMAR 13A.08.04.05. Therefore, this office does not find that a violation has occurred with respect to this aspect of the allegation.

Seclusion

In this complaint, the parent alleges that the school staff utilized a “resource room” to seclude the student. There is video documentation that on November 10, 2022, the use of this room constituted seclusion as the student was left alone in the room and was prevented from leaving when the staff member held the door closed.

Based upon the Finding of Facts #10- #13, MSDE finds that the CCPS has secluded the student since December 9, 2021, in accordance with COMAR 13A.08.04.05. Therefore, this office does find that a violation has occurred with respect to this aspect of the allegation.

ALLEGATION #2: PROVISION OF A ONE-ON-ONE ADULT SUPPORT

FINDINGS OF FACTS:

14. The student’s IEP, developed on May 16, 2022, requires a one-on-one dedicated aid.
15. There is documentation that the student was provided with a one-on-one dedicated aid since the start of the 2022- 2023 school year.

CONCLUSIONS:

Based upon the Findings of Facts #14 and #15, MSDE finds that the CCPS has ensured that the student has been consistently provided with the special education support, specifically the one-on-one adult support, as required by the IEP since the start of the 2022- 2023 school year. Therefore, this office does not find that a violation has occurred with respect to allegation #2.

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, 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.¹ 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. Diane Eisenstadt, Compliance Specialist, Family Support and Dispute Resolution Branch, MSDE, to ensure the effective implementation of the action.² Ms. Eisenstadt can

¹ 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.

² MSDE will notify the public agency’s Director of Special Education of any corrective action that has not been completed within the established timeframe.

[REDACTED]
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be reached at (410) 767-7770 or by email at diane.eisenstadt@maryland.gov.

Student Specific

The IEP team must determine if the student's IEP contains appropriate behavioral supports and, in addition, whether the violation related to the implementation of the use of restraints and seclusion had a negative impact on 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.

School-Based

MSDE requires the CCPS to provide documentation by April 3, 2023, of the steps it has taken to ensure that staff at [REDACTED] properly implements the use of restraint and seclusion under COMAR and the IDEA. These steps must include staff development. Evidence of the staff development session must be provided to MSDE by April 3, 2023.

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.

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,

Dr. Deann M. Collins
Deputy Superintendent
Office of the Deputy Superintendent of Teaching and Learning

DMF: sd

c: Cynthia McCabe
[REDACTED]
Alison Barmat
Gerald Loiacono
Diane Eisenstadt
Sarah Denney