




May 19, 2023




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

RE:   
Reference: #23-179

Dear Parties:


The Maryland State Department of Education (MSDE), Division of Early Intervention Special Education Services (DEI/SES), 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 March 21, 2023, MSDE received a complaint from Mr. , 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.

MSDE investigated the allegation that the PGCPS did not follow proper procedures when restraining the student on March 20, 2022, in accordance with COMAR 13A.08.04.05.

**BACKGROUND:**

The student is seventeen years old, is identified as a student with Autism under the IDEA and has an IEP that requires the provision of special education and related services. The student is placed by the PGCPS at  a nonpublic, separate, special education school.

**FINDINGS OF FACTS:**

1. The Student's IEP, in effect on March 21, 2022, does not include the use of restraint as an intervention for the student.
2. On March 20, 2023, during transportation home from school on the bus, the student was able to remove his safety vest. After removing his safety vest, the student physically aggressed against other

students and adult staff on the bus. Adult staff on the bus restrained the student by confining him in his seat against the window while preventing him from moving his arms.

3. There is no documentation that the staff who restrained the student were trained in the use of restraint or properly utilized restraint with the student, nor is there documentation that the PGCPs documented the use of restraint with the student following the incident, informed the parent of the use of restraint, or convened an IEP team meeting following the restraint to discuss the student's behavior.

## **DISCUSSION/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. Schools must ensure that parental consent is obtained prior to including restraint in a student's IEP (COMAR 13A.08.04.05A(1)(a)).

Imminent, serious, physical harm has the same meaning as serious bodily injury as used in the Individuals with Disabilities Education Act (IDEA). It means bodily injury, which involves: a substantial risk of death; extreme physical pain; protracted and obvious disfigurement; or protracted loss or impairment of the function of a bodily member, organ, or mental faculty (34 C.F.R. § 300.530(h)(i)(3) and 18 U.S.C. § 1365(h)(3)).

Physical restraint shall be removed as soon as the student is calm and may not exceed thirty (30) minutes (COMAR 13A.08.04.05A(1)(d)). When utilizing physical restraint, school personnel may not place a student in a facedown 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)(e)).

### **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 must review and revise it, as appropriate, to ensure that it addresses the student's behavioral needs (COMAR 13A.08.04.05C(2)).

Based on Findings of Facts #1 to #3, MSDE finds that the PGCPs did not follow proper procedures when restraining the student on March 20, 2022, in accordance with COMAR 13A.08.04.05. Therefore, this office finds that a violation 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, 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. 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. Ms. Eisenstadt can be reached at (410) 767-7770 or by email at [diane.eisenstadt@maryland.gov](mailto:diane.eisenstadt@maryland.gov).

MSDE requires the PGCPs to provide documentation by July 1, 2023, that all staff who support the student during transportation are trained in the proper use of restraint and understand the legal requirements for utilizing and documenting restraint.

MSDE further requires the PGCPs to provide documentation by July 1, 2023, that it has convened an IEP team meeting to discuss the incident where restraint was used with the student and considered the need to conduct a Functional Behavioral Assessment (FBA) or review and revise the student's required behavioral interventions and Behavior Intervention Plan.

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

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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

DC/gl

c: Monica Goldson  
Keith Marston  
Darnell Henderson  
Alison Barmat  
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Gerald Loiacono