



September 12, 2022

[REDACTED]
[REDACTED]
[REDACTED]

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

RE: [REDACTED]
Reference: #23-016

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 July 28, 2022, the MSDE received a complaint from Mr. [REDACTED] 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 allegation that the PGCPS did not ensure that proper procedures were followed when including exclusion, seclusion and physical restraint on the student’s Behavioral Intervention Plan (BIP) on May 12, 2022, in accordance with COMAR 13A.08.04.

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 [REDACTED] school.

FINDINGS OF FACTS:

1. On May 12, 2022, the IEP team met, in part, to review and revise the student’s BIP.
2. There is no documentation that the IEP team determined that the student required the use of physical restraint, seclusion, or exclusion as part of the student’s BIP.

3. On May 12, 2022, staff from the student's school provided the complainant with an "updated" BIP that reflected the use of physical restraint, seclusion, and exclusion.
4. On August 17, 2022, the PGCPs provided the complainant with a copy of an updated BIP that does not reflect the use of physical restraint, seclusion, or exclusion.

CONCLUSIONS:

Based on Findings of Facts #1 to #3 the MSDE finds that the PGCPs did not ensure that proper procedures were followed when including exclusion, seclusion and physical restraint on the student's BIP on May 12, 2022, in accordance with COMAR 13A.08.04. Therefore, this office finds that a violation has occurred with respect to this allegation.

Notwithstanding this violation, based on Findings of Facts #4, the MSDE finds that the parent was provided with a corrected copy of the student's BIP that does not reflect the use of physical restraint, seclusion or exclusion. Therefore, no further student-based corrective action is necessary to address the violation.

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 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 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 Ms. Diane Eisenstadt, Compliance Specialist, Family Support and Dispute Resolution Branch, MSDE, to ensure the effective implementation of the action.² Ms. Eisenstadt can be reached at (410) 767-7770 or by email at diane.eisenstadt@maryland.gov.

The MSDE requires the PGCPs to provide documentation by December 1, 2022, that it has conducted a review of the records of each student assigned to a nonpublic school to ensure that if a student is identified as requiring the use of restraint or seclusion, that the IEP team has determined that the support is necessary for the student and that appropriate procedures were followed, including obtaining the consent of the student's parent.

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, 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.

² 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.

If the regulatory requirements are not being implemented, actions to be taken in order to ensure that the violation does not recur must be identified, and a follow-up report to document correction must be submitted within ninety (90) days of the initial date of a determination of non-compliance. Upon receipt of this report, the MSDE will re-verify the data to ensure continued compliance with the regulatory requirements.

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 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. 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:gl

c: Monica Goldson
Barbara VanDyke
Keith Marston
Darnell Henderson
Alison Barmat
Diane Eisenstadt
Gerald Loiacono