

March 1, 2024

[REDACTED]

Ms. Allison Myers
Executive Director, Department of Special Education
Baltimore County Public Schools
Jefferson Building, 4th Floor
105 W Chesapeake Avenue
Towson, Maryland 21204

RE: [REDACTED]
Reference: #24-120

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.

ALLEGATION:

On January 3, 2024, MSDE received a complaint from [REDACTED], hereafter, “the complainant,” on behalf of her son. In that correspondence, the complainant alleged that the Baltimore County Public Schools (BCPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to the above-referenced student.

MSDE investigated the allegation that the BCPS did not follow proper procedures when using physical restraint with the student on November 15, 2023, in accordance with COMAR 13A.08.04.05.

BACKGROUND:

The student is 12 years old and is identified as a student with other health impairments under the IDEA. He attends [REDACTED]. The student has an Individualized Education Program (IEP) that requires the provision of special education instruction and related services.

FINDINGS OF FACTS:

1. The IEP in place when the student entered [REDACTED] is dated April 26, 2023. The IEP reflects that the student is pursuing a Maryland High School diploma, and that the student was performing below grade level in math calculation, reading comprehension, and social/emotional/behavioral. The IEP states that the student’s deficits in emotional regulation affect his ability to calm himself and participate fully in the general education curriculum. According to the IEP, the student does not have special communication needs or an assistive technology device or services. The IEP also states that the student has a functional behavior assessment and Behavior

Intervention Plan (BIP) dated May 19, 2021. The use of physical restraint is not a part of the student's IEP or BIP. The IEP required that the student receive the following accommodations: audio amplification, bookmark (flag items for review), blank scratch paper, eliminate answer choice, general administration directions clarified, read aloud, and repeated as needed, highlight tool, headphones or noise buffers, line reader mask tool, magnification/enlargement device, notepad, pop-up glossary, redirect student, spell check or external spell check device, writing tools, graphic organizer, audio materials, text to speech for mathematics, science, and government assessments (text only), small group, separate or alternate location, specified area or seating, frequent breaks, reduce distractions to self, reduce distractions to others, and extended time. The supplementary aids, services, program modifications, and supports for the student included extended time for assignments (as needed), daily use of organizational aids, daily altered modified assignments, frequent changes in activity or opportunities for movement daily, daily social skills training, preferential seating daily, and monthly occupational therapist consult. The student had IEP goals in the areas of reading, math, self-management, emotional regulation, and relationship skills. The student's services included twenty-five hours weekly of classroom instruction outside of general education in a small group setting in the Social Emotional Learning Regional (SEL) program, and five hours weekly of classroom instruction inside general education. The student was also to receive thirty minutes weekly of social work services outside of general education in a small group or individual format. The student's least restrictive environment was determined to be the [REDACTED] SEL program.

2. In August 2023, the student began attending [REDACTED] in their SEL. On October 2, 2023, the IEP team at [REDACTED] met to conduct a triennial planning team for the student. The prior written notice (PWN) reflects that the team decided to conduct an educational assessment, autism rating scales, a cognitive assessment, a functional behavior assessment, and a classroom observation for the student. The complainant, who was in attendance, agreed to the assessments and provided consent. During the meeting, the team reviewed the student's current progress and discussed behaviors and concerns that had led to the student receiving disciplinary consequences. It was stated that the student had been struggling with the transition to middle school, and the complainant provided some additional background information to the team in this regard. Teacher reports shared in the meeting stated that the student is impulsive, does not like to stay in the classroom, and struggles to complete work even with adult support. It was also stated that the student may have an emotional outburst, often wants to leave school as soon as he arrives and feels like people are against him. However, it was also stated that the student is very capable and can be very helpful when he is willing to work.
3. On October 9, 2023, the complainant emailed BCPS staff requesting that a copy of the student's BIP be sent home in his backpack. There is documentation that BCPS staff had an envelope to send home to the complainant on the same day.
4. On October 11, 2023, the student received one day of out-of-school suspension for eloping from the building and breaking a chair.
5. On October 17, 2023, the IEP team held an emergency meeting at the request of the complainant. The meeting had to be rescheduled due to the unavailability of the complainant and her advocate. The PWN from the meeting states that all discipline concerns should be addressed with the assistant principal.

6. On November 14, 2023, the complainant sent an email to BCPS staff regarding the student's attempts to elope from school. Specifically, she stated that a BCPS staff member had asked for permission to physically restrain the student, to which the complainant stated that she declined that request due to safety concerns about staff training to do so appropriately. The complainant also stated that she was not going to take the student to the hospital as requested by BCPS staff due to some concerning remarks that the student had made because those behaviors are not observed at "home, church, or the ball field." The complainant shared that "...the building seems to trigger [the student's] fight or flight response," and she looked forward to the IEP meeting scheduled on November 20, 2023.
7. On November 15, 2023, the student was involved in an incident of eloping from school. According to the service record from the school social worker, the student's mother arrived to drop the student off at school and was met in the parking lot by a BCPS staff member who escorted the student into the building. Once inside the student initially refused to leave the staff member's office, but then he walked out of the office and eloped from the building. The staff member stayed with the student and followed him as he walked around the school property and across the street while she attempted to reach the student's mother and grandmother by telephone but was unsuccessful. When the student was approached by the school resource officer in his vehicle, the student willingly got into the car. When the student and staff members arrived back at the school, the student refused to get out of the vehicle and attempted to call his mother and grandmother. The student exited the vehicle while talking to his mother and walking toward the bus loop, and then threw his telephone to the ground. The staff member picked up the phone to tell the complainant that BCPS staff was with the student and would update her on the situation. Another staff member came to assist, and when the student was asked to return to the building, he began to curse the staff member and "walked [into her] personal space." The student was asked to "back up and maintain appropriate boundaries," but he walked away toward the bus loop. The statement submitted by BCPS staff reflects that the student attempted to hit one of the staff members, and in response, the staff member "put him in a PCM [Professional Crisis Management] hold and he was sitting on the ground and [the other staff member] held his legs as he was kicking and began punching [the other staff member] in the arm." The statement reflects that at that time the complainant and her mother started "yelling from across the street to let go of their son" after which time the complainant took the student home.
8. A statement from the SEL teacher who was involved in the incident, also dated November 15, 2023, reflects that the SEL teacher asked the student to come into the SEL office to calm down and relax, but the student "continued to refuse and took a swing at [her]." The statement says that she "attempted to block and turn him around to prevent him from punching [her]. He began to fight and attempted to kick [her], so [she] gently lowered and seated him on the ground. [The other staff member] assisted by blocking [the student's] legs from kicking [the SEL teacher and the student then began to kick and swing at her]." The statement reflects that the student's mother "appeared from across the street yelling at [the staff members] to get off of her son." According to this statement, as the staff members backed away from the student when his mother arrived, he was yelling obscenities and tried to attack the staff members again.
9. On November 18, 2023, the complainant sent an email to BCPS staff requesting a written explanation of the events that occurred on November 15, 2023, from 8:40 am to 9:45 am. The request was to receive the information no later than November 20, 2023. There is no documentation of a response provided by BCPS.

10. On November 20, 2023, the IEP team at [REDACTED] met to conduct a review of the student's IEP and discuss placement and the student's least restrictive environment due to concerns about progress and safety. The PWN reflects that due to the student's increased instances of elopement from class and the building the team decided to add a dedicated 1:1 aide to the student's IEP to assist in de-escalation and safety. The team also decided to provide the student with a safe space to take sensory breaks and de-escalate as needed. Finally, the team decided that a "...temporary diagnostic placement at a private separate day school" was necessary at that time to assess the student and collect additional data to appropriately update the student's IEP and program. The PWN reflects that this determination was based on "...increased concerns for [the student's] safety due to elopement from the school building and threats to harm self and others has escalated since the start of the 2023-2024 school year. The team agreed that this placement [would] continue for [sixty] school days and the team will reconvene prior to the end of the [sixty] days to review the previously ordered assessments and revise the IEP as appropriate, including services and placement." The PWN reflects that the team agreed to discuss eligibility at the student's next IEP meeting when the ordered assessments were completed. The PWN states that the team considered parent and advocate input, incident reports, and progress reports. A representative from the temporary diagnostic placement attended the meeting and explained the structure and resources available at the school to the complainant. The parent was also offered to tour the school. Finally, the team discussed the fact that the student would not elope from the building if he did not have his phone, but if he did have his phone, he would leave the building and call his mother to tell her that he was leaving so that she can come to the school and pick him up. However, when he did not have his phone he would leave the classroom, but not the building.
11. The IEP developed after the November 20, 2023, meeting added daily adult support to the student's IEP and changed his services to one session outside general education for thirty hours weekly from November 21, 2023, to February 29, 2024, at a private separate day program. Additionally, the least restrictive environment reflects that the team decided that the student would attend a private separate day school as a sixty-day diagnostic placement to assess and collect additional data to appropriately update the IEP, BIP, and program with more intensive supports to best address the student's needs."
12. The Behavior Intervention Plan (BIP) revised on November 20, 2023, considered the problem behaviors of threats (toward staff or students, bringing or having weapons at school, or destructive action to the school building) and non-compliance (actively refusing to comply with teacher/staff requests and rules, leaving an assigned area without permission including moving about the classroom, leaving the classroom or leaving the building). The BIP does not include the use of "PCM" escorts or restraints as a strategy to be used with the student. The BIP does state that "staff should block any aggression and high-magnitude disruptions," but it does not state what this entails.
13. On December 5, 2023, the complainant sent another email to BCPS staff. In this email, the complainant expressed many concerns, one of which was that the team had considered incident reports during the November 20, 2023, IEP meeting that she had not received.
14. There is documentation that four staff members at [REDACTED] are certified in "PCM". Of those four, only one of them was involved in the November 15, 2023, eloping and aggression incident with the student.

15. There is documentation that PCM escorts¹ involve “staff holding on to the student’s arm while the student is moving their feet with staff. Escort procedures, which are not restraints, are on a continuum of least restrictive (Independent Walk-no physical contact) to most restrictive (One Arm Wrap Around for 1-person; Double Sunday Stroll for 2-person). Staff fade to the next least restrictive procedure after 3 seconds of less resistance. PCM immobilization (restraint) involves staff holding the student in place while standing. There are no seated or floor/ground procedures in PCM. All procedures use natural body position with the student walking or standing in place.”

CONCLUSION:

The issue in this case is whether or not the BCPS followed proper procedures when using physical restraint on the student. Generally, the use of physical restraint is prohibited in public agencies and nonpublic schools unless physical restraint is necessary to protect a student or other individual from imminent, serious physical harm and other less intrusive, nonphysical interventions have failed or been demonstrated to be inappropriate for the student. (COMAR 13A.08.04.05).

If the use of restraint is not included in a student’s IEP or BIP, the IEP team must convene within 10 business days of the incident to consider: the need for an FBA, developing appropriate behavioral interventions, implementing a behavior intervention plan, training for school personnel, and revisions to the IEP (COMAR 13A.08.04.05).

In this case, the use of restraint is not included in the student’s BIP or IEP. The IEP team met within 10 days of the incident, however, there is no documentation that the team discussed the restraint. The team focused only on the student’s placement and services. There is also documentation that reflects that during the incident the student attempted to fight and kick a staff member who “...gently lowered and seated him on the ground,” and whose feet were held to keep him from kicking. There is also further documentation reflecting that the student was placed in a “PCM hold and he was sitting on the ground.” Both statements reflect that during the incident the student was standing and then was seated on the ground by staff and his feet were held. However, based on the documentation provided, PCM immobilization involves staff holding the student in place while standing and there are “no seated or floor/ground procedures in PCM,” nor are there any circumstances under which a student’s legs would be held. In addition, there were individuals involved in the “hold” who were not trained in the use of PCM. While BCPS maintains this incident was not a restraint, the incident involved two staff members holding the student’s torso and legs, thereby immobilizing or reducing the ability of the student to move his torso, arms, or legs freely – consistent with the definition of physical restraint under COMAR 13A.08.04.02B(14)(a).

Based on the Findings of Fact #1, #2, #5 to #12, #14, and #15, MSDE finds that the BCPS did not follow proper procedures when using physical restraint with the student on November 15, 2023, in accordance with COMAR 13A.08.04.05. Therefore, this office finds that a violation occurred with respect to the allegation.

¹ State law and regulations govern what constitutes a physical restraint — not the definitions used by a public agency’s crisis management program. Accordingly, COMAR 13A.08.04.02 states “physical restraint” means a personal restriction that immobilizes a student or reduces the ability of a student to move their torso, arms, legs, or head freely. “Physical restraint” does not include: (i) briefly holding a student to calm or comfort the student; (ii) holding a student’s hand or arm to escort the student safely from one area to another; (iii) moving a disruptive student who is unwilling to leave the area if other methods such as counseling have been unsuccessful; or (iv) intervening in a fight in accordance with Education Article §7-307, Annotated Code of Maryland.

CORRECTIVE ACTIONS/TIMELINES:

The IDEA requires that State complaint procedures include 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. 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.² 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. Alison Barmat, Branch Chief, Family Support and Dispute Resolution Branch, MSDE, to ensure the effective implementation of the action.³ Ms. Barmat can be reached at (410) 767-7770 or by email at alison.barmat@maryland.gov.

Student-Specific

MSDE requires that no later than May 1, 2024, the BCPS convene an IEP team meeting in order to determine the amount of compensatory services or other remedy to address the improper use of restraint on the student on November 15, 2023.

School-Based

MSDE requires that no later than August 1, 2024, the BCPS provide professional development to the team at [REDACTED] regarding the proper use of PCM holds and restraints. BCPS must also review documentation of other PCM holds at [REDACTED] for students with IEPs during the 2023-2024 school year to ensure that proper procedures were followed. The monitoring report must be submitted to MSDE by August 1, 2024.

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, 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 (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

² The United States Department of Education, Office of Special Education Programs (OSEP) states that the public agency corrects 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.

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,

Antoine L. Hickman, Ed.D.
Assistant State Superintendent
Division of Early Intervention and Special Education Services

ALH/ebh

c: Dr. Myriam Rogers, Superintendent, BCPS
Dr. Jason Miller, Coordinator, Special Education Compliance, BCPS
Charlene Harris, Supervisor, Special Education Compliance, BCPS
Norma Villanueva, Specialist, Special Education Compliance, BCPS
[REDACTED], Acting Principal, [REDACTED], BCPS
Alison Barmat, Branch Chief, Family Support and Dispute Resolution, MSDE
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Nicol Elliot, Section Chief, Monitoring and Accountability, MSDE
Dr. Paige Bradford, Section Chief, Programmatic Support and Technical Assistance, MSDE