


July 19, 2024




Ms. Colleen Sasdelli
Director of Special Education
Harford County Public Schools
102 S. Hickory Avenue
Bel Air, Maryland 21014

RE: 
Reference: #24-235

Dear Parties:

The Maryland State Department of Education, Division of Early Intervention and 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 10, 2024, MSDE received a complaint from , “the complainant,” on behalf of her son, the above-referenced student. In that correspondence, the complainant alleged that the Harford County Public Schools (HCPS) 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 HCPS did not ensure proper procedures were followed in response to a request to access student records made in November 2023, including a video recording of a bus incident that occurred on or around July 11, 2023, in accordance with 34 CFR §300.613.
2. The HCPS has not ensured that proper procedures were followed when physical restraint was used with the student in an incident occurring on the bus on or around July 11, 2023, in accordance with COMAR 13A.08.04.05.
3. The HCPS did not ensure that a copy of the documents from the IEP team meetings were provided within five (5) business days after the meetings since May 2023, in accordance with COMAR 13A.05.01.07.
4. The HCPS did not ensure that the concerns of the parent regarding the use of restraint, contraindications to the use of hands-on intervention, and other forms of behavioral intervention were considered in developing the child’s educational program since May 2023, in accordance with 34 CFR §300.324.

BACKGROUND:

The student is nine years old and is identified as a student with multiple disabilities under the IDEA. Currently, the student is homeschooled. During the 2022-2023 and 2023-2024 school years, the student was placed by HCPS and attended [REDACTED] ([REDACTED]), a non-public, separate, special education school. The student has an IEP that requires the provision of special education instruction and related services.

FINDINGS OF FACT:

1. The complainant sent a request to access the student's records on November 11, 2023. The request was sent to HCPS/[REDACTED]. Some student records were made available to the complainant on or around January 11, 2024. Other student records were made available to the complainant in early February 2024.
2. With respect to the July 11, 2023, bus incident involving the student, there is documentation that on December 22, 2023, the HCPS informed the complainant that "bus videos are not maintained."
3. Bus videos are typically not maintained by HCPS and are taped over in a continuous loop, however, in April 2024, HCPS discovered that there were existing videos from the date in question. There is documentation that a formal request to view the bus video was made on April 29, 2024.
4. The complainant viewed the bus videos in May 2024.

DISCUSSION AND CONCLUSIONS:

ALLEGATION #1 ACCESS TO STUDENT RECORDS

Each local education agency (LEA) must permit parents to inspect and review any education records relating to their children that are collected, maintained, or used by the agency under the IDEA. The LEA must comply with a request without unnecessary delay and before any meeting regarding an IEP, any hearing, or resolution session held under the IDEA, and in no case more than 45 days after the request has been made. 34 CFR § 300.613.

In this case, the complainant made a request to access the student's records on November 11, 2023. The complainant was not provided with access to the student's full student record until February 2024.

Based on Findings of Fact #1, MSDE finds that the HCPS did not ensure proper procedures were followed in response to a request to access student records made in November 2023, in accordance with 34 CFR §300.613. Therefore, this office finds that a violation occurred concerning this allegation.

With respect to the July 11, 2023, bus videos, these videos were not student records. They were not directly related to the student, were not typically maintained by the LEA, and were not a part of the student's educational record. Accordingly, they were not subject to the access requirements under 34 CFR §300.613. Based on Findings of Fact #2 through #4, MSDE finds that a violation did not occur concerning this allegation.

Notwithstanding these findings, the complainant has reviewed the student's educational records. The complainant has also reviewed the bus videos. No additional student specific correction is required regarding this allegation.

FINDINGS OF FACT:

5. There is a July 11, 2023, Bus Driver Report describing the student's behavior as being "difficult, not wanting to board the bus, standing on seats, throwing vests, hitting the seat and window." According to the driver, three or four staff members boarded the bus and calmed the student. After a brief period of calm, the student again escalated and was removed from the bus.
6. There is a Minor Incident Report dated July 11, 2023, describing the student's behavior going out to the bus as being difficult after being denied access to a specific staff member. The student was reported to have calmed, was able to board the bus calmly, but began to throw items once on the bus. Staff boarded the bus to assist with de-escalation. The student calmed for a period of time but began to escalate again and was removed from the bus using a Double Sunday Stroll.
7. The bus video from July 11, 2023, reflects that the student's hands were held, his torso was confined from moving, and his leg movement was restricted for approximately 2 minutes and 21 seconds, while on the bus.¹ There is no documentation of a restraint having occurred during this time period.
8. The bus video and additional incident document also reflects that when the student was removed from the bus, he did not leave the bus willingly. The video reflects that the student was removed from the bus by two adults who appeared to lift the student by placing their arms under his armpits. Once off the bus, the student was not released and was carried a fairly long distance to a spot where he continued to be noncompliant until he was able to calm and complete a compliance task.
9. There is no documentation that the student's removal from the bus and placement in the calming space was documented as a restraint.

CONCLUSIONS:

ALLEGATION #2

RESTRAINT PROCEDURES

Based on Findings of Fact #5 through #9, MSDE finds that the HCPS has not ensured that proper procedures were followed when physical restraint was used with the student in an incident occurring on the bus on July 11, 2023, in accordance with COMAR 13A.08.04.05. Therefore, this office finds that a violation occurred concerning this allegation.

¹ This incident meets the definition of a restraint pursuant to COMAR 13A.08.04 "Physical restraint" means a personal restriction that immobilizes a student or reduces the ability of a student to move [the student's] their torso, arms, legs, or head freely. Md. Code, Education § 7-1101(d)(1).

FINDINGS OF FACT:

10. The student's current IEP is dated July 27, 2023. His previous IEP was dated June 13, 2022.²
11. There were IEP team meetings convened on July 26, 2023; August 3, 2023; August 15, 2023; October 6, 2023; October 16, 2023; November 14, 2023; May 9, 2024; and May 23, 2024, for the student.
12. There is documentation that prior written notice (PWN) and documents from these IEP team meetings were sent to the complainant within five business days following each meeting.

DISCUSSION AND CONCLUSIONS:

ALLEGATION #3

DOCUMENTS FOLLOWING THE MEETING

It is the public agency's responsibility to take steps to ensure that the parent of a student with a disability is provided an accessible copy of the completed IEP not later than five business days after the scheduled IEP team meeting. COMAR 13A.05.01.07D

Based on Findings of Fact #10 through #12, MSDE finds that the HCPS did ensure that a copy of the documents from the IEP team meetings were provided within five (5) business days after the meetings since May 2023, in accordance with COMAR 13A.05.01.07. Therefore, this office finds that a violation did not occur concerning this allegation.

FINDINGS OF FACT:

13. On May 21, 2023, the complainant communicated with [REDACTED] stating, "Particularly because [the student] reacts so strongly to hands-on intervention, I would love to see a behavioral goal that includes [the student] de-escalating in place so the number of transports can be reduced. I know you are working on this, but perhaps we can brainstorm what else might support both [the student] and staff in achieving this goal."

On October 16, 2023, the IEP team documented the complainant's concerns in the PWN from that meeting. Specifically, "The team went on to discuss that hands-on as an intervention will escalate [the student]. It heightens his emotional escalation. Rather than being an integral part of who [the student] is, his response to hands-on intervention is more of an environmental stimuli, which results in escalation of intensity in behaviors."
14. The student's July 27, 2023, Parent Input statement includes the following under the section titled: What doesn't Work: "Going hands-on, using restraint or seclusion. These practices are harmful to [the student] and will set him further back in trust and progress."
15. There is no documentation that the IEP team included these concerns as contraindications to the use of restraint in the student's IEP or that they are included in any versions of the student's behavior intervention plans since May 2023.

² This date reflects that the student's IEP was not reviewed annually, as required by 34 CFR 300.324(b)(1). However, this complaint is limited to violations that occurred within one year of the date of the filing.

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 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/ab

c: Dr. Sean Bulson, Superintendent, HCPS
Stephanie Swisher, Supervisor, Special Education Compliance, HCPS
Nicol Elliott, Section Chief, Monitoring and Accountability, MSDE
Dr. Paige Bradford, Section Chief, Performance Support and Technical Assistance, MSDE
Alison Barmat, Branch Chief, Family Support and Dispute Resolution, MSDE
Tracy Givens, Section Chief, Dispute Resolution, MSDE
Nicole Green, Compliance Specialist, MSDE