

August 27, 2024

[REDACTED]

Ms. Kathryn Chib  
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Baltimore, MD 21209

Ms. Diane McGowan  
Co-Director Special Education  
Anne Arundel County Public Schools  
2644 Riva Road  
Annapolis, Maryland 21401

RE: [REDACTED]  
Reference: #24-288

Dear Parties:

The Maryland State Department of Education (MSDE), Division of Early Intervention and Special Education Services, has completed the investigation of the complaint regarding special education services for the above-referenced student. This correspondence is the report on the final results of the investigation.

**ALLEGATION:**

On June 28, 2024, MSDE received a complaint from [REDACTED] and Ms. Kathryn Chib, hereafter, “the complainants,” on behalf of the above-referenced student. In that correspondence, the complainants alleged that the Anne Arundel County Public Schools (AACPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) concerning the above-referenced student.

MSDE investigated the allegation that the AACPS, did not ensure that the complainant was afforded an opportunity to attend and participate in the Individualized Education Program (IEP) team meeting on June 11, 2024, in accordance with 34 CFR § 300.322 and COMAR 13A.05.01.07D.

**BACKGROUND:**

The student is eight years old and is a student with multiple disabilities under the IDEA. She attends [REDACTED] and has an IEP that requires special education instruction and related services.

### **FINDINGS OF FACT:**

1. The IEP, in effect on May 22, 2024, was developed on April 12, 2024. The IEP reflects that the student has a Functional Behavior Plan (FBA) dated November 8, 2023, and a Behavior Intervention Plan (BIP) dated April 12, 2024. The BIP reflects that the student has difficulty with physical aggression, elopement, and refusals/noncompliant behaviors. The IEP team did not recommend the use of physical restraint.
2. On May 22, 2024, the student was involved in an incident that resulted in the use of physical restraint. The restraint incident report reflects that the student was aggressive and demonstrated unsafe behavior. Specifically, the “[Student] was asked to read a decodable book. She stated, “I thought I missed this I am not going to read this book.” She then began yelling, swiping materials off the desks, throwing materials on the floor and at peers, and moving around the room. The student also bit and attempted to hit and kick the classroom teacher.

The incident report further reflects:

- less intrusive measures used;
  - total time and type of restraint;
  - student behavior and reaction during the restraint;
  - the name, role, and signature of staff who observed, implemented, or monitored the restraint; and
  - the name and signature of administrator, evaluation by the school nurse, and parent notification by email.
3. There is documentation that the staff members who observed and implemented the physical restraints used on May 22, 2024, were certified in its appropriate use.
  4. On June 4, 2024, the AACPS school staff emailed the complainant proposing an IEP team meeting on June 5, 2024, at 11:30am to discuss the restraint incident.
  5. On June 4, 2024, the complainant emailed the school staff sharing that the family is unavailable on June 5th. The complainant requested that the AACPS team “summarize what you would like to discuss and forward that via email.”
  6. On June 5, 2024, the AACPS school staff emailed the complaint proposing an IEP team meeting on June 6, 2024, at 11:30 am to discuss the student’s restraint. On June 5, 2024, the complainant emailed sharing that “We are not available to meet this week. We have some availability next week, Friday the 14th appears to be the most flexible for us.”
  7. On June 6, 2024, the AACPS school staff emailed the complaint proposing an IEP team meeting on June 11, 2024, at 8:30 am and that the team is unavailable on June 14, 2024.
  8. On June 7, 2024, the complainant emailed the school staff responding to the June 11, 2024, meeting proposal, sharing that the family is not available and included additional dates and times that the family is available.

9. On June 10, 2024, the AACPS school staff emailed the parents sharing that the AACPS team would proceed with the June 11, 2024, IEP team meeting.
10. On June 10, 2024, the family responded by email objecting to the meeting being held without either of the parents being present.
11. On June 11, 2024, the IEP team convened to discuss the restraint incident. The PWN developed after the meeting reflects that the school-based administrator/designee, special education teacher, reading teacher, school psychologist, behavior specialist, special education resource teacher, occupational therapist, IEP clerk, and general education teacher participated in the meeting. The AACPS IEP team reviewed the incident and determined that adding restraint to the BIP is not warranted at this time. However, a therapeutic hold may be utilized in the future to maintain her safety and the safety of others.

### **DISCUSSION AND CONCLUSION:**

The public agency is required to take steps to ensure a parent of a student with a disability is present or is afforded the opportunity to attend and participate in IEP team meetings, including notifying the parent of the meeting early enough to ensure that the parent will have an opportunity to attend and scheduling the meeting at a mutually convenient time and place. If the parent cannot attend an IEP team meeting, the public agency must use other methods to ensure participation, including by individual or conference telephone calls. There is no requirement that school systems contact the parent prior to scheduling IEP team meetings. Rather, school systems are required to provide the parent with notice of a meeting early enough so that the parent can arrange his or her schedules to attend (34 CFR §300.322).

However, MSDE does not agree that the public agency is prohibited from convening an IEP team meeting without parent involvement no matter how many dates are offered to the parent. While the parents are equal participants in the IEP process, the public agency has the ultimate responsibility for “crafting the IEP” (Letter to Simon OSEP 1987). Accordingly, a public agency may not be bound solely by the parent’s wishes with regards to scheduling an IEP team meeting.

Based on the Findings of Fact #4 through #10, MSDE finds that the AACPS did ensure that the complainant was afforded an opportunity to attend and participate in the IEP team meeting on June 11, 2024, in accordance with 34 CFR § 300.322 and COMAR 13A.05.01.07D(2). Therefore, this office finds that a violation did not occur concerning this allegation.

### **ADDITIONAL VIOLATION IDENTIFIED DURING THE COURSE OF THE INVESTIGATION**

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 in order 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 when other methods such as counseling have been unsuccessful; or
- (iv) Breaking up a fight in the school building or on school grounds in accordance with Education Article § 7-307, Annotated Code of Maryland. (COMAR 13A.08.04.02).

## The Use of Physical Restraint

The use of physical restraint is prohibited in public agencies and nonpublic schools unless:

- (i) Physical restraint is necessary to protect the student or another individual from imminent, serious physical harm;<sup>1</sup> and
- (ii) Other less intrusive, nonphysical interventions have failed or been demonstrated to be inappropriate for the student.

Physical restraint shall only be implemented and monitored by school personnel trained in the appropriate use of physical restraint consistent with COMAR 13A.08.04.06C.

In applying physical restraint, school personnel shall only use reasonable force as is necessary to protect a student or other person from imminent, serious physical harm.

Physical restraint:

- (i) Shall be removed as soon as the student no longer poses a threat of imminent, serious physical harm; and
- (ii) May not exceed 30 minutes.

In applying physical restraint, school personnel may not:

- (i) Place a student in a face-down position;
- (ii) Place a student in any other position that will obstruct a student's airway or otherwise impair a student's ability to breathe, obstruct school personnel's view of a student's face, restrict a student's ability to communicate distress, or place pressure on a student's head, neck, or torso; or
- (iii) Straddle a student's torso. (COMAR 13A.08.04.05A)

## Documentation of the use of restraint

Each time a student is in a restraint, school personnel involved in the restraint shall debrief and document using a form developed by the Department:

- (i) Other less intrusive interventions that have failed or been determined inappropriate;
- (ii) The precipitating event immediately preceding the behavior that prompted the use of restraint;

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<sup>1</sup> Serious physical harm has the same meaning as "serious bodily injury" as defined in 18 U.S.C. §1365(h)(3). (COMAR 13A.08.03.02) "Serious bodily injury" means an injury inflicted on another individual that results in:

1. A substantial risk of death;
2. Extreme physical pain;
3. Protracted and obvious disfigurement; or
4. Protracted loss or impairment of the function of a bodily member, organ, or mental faculty in accordance with 18 U.S.C. § 1365(h)(3).

- (iii) The behavior that prompted the use of a restraint;
- (iv) The names of the school personnel who observed the behavior that prompted the use of restraint; and
- (v) The names and signatures of the staff members implementing and monitoring the use of restraint.

Documentation under § A(3) of this regulation shall include a description of the restraint event including:

- (i) The type of restraint;
  - (ii) The length of time in restraint;
  - (iii) The student's behavior and reaction during the restraint; and
  - (iv) The name and signature of the administrator informed of the use of restraint.
- (COMAR 13A.08.04.05A(3))

Each time restraint is used, parents shall be provided oral or written notification within 24 hours, unless otherwise provided for in a student's behavior intervention plan 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 or seclusion, the IEP team shall meet within ten business days of the incident to consider the need for conducting a 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)).

In this case, the complainants, alleged that the AACPS, did not ensure that the parents, were afforded an opportunity to attend and participate in the Individualized Education Program (IEP) team meeting on June 11, 2024, to discuss the restraint that occurred on May 22, 2024. The school-based staff conducted an IEP team meeting without the parents 14 days after the restraint.

Based on the Findings of Fact #2, and #11, MSDE finds that the AACPS did not ensure that the IEP team met within ten business days of the incident to review the student's BIP and consider revising it as appropriate since May 22, 2024, in accordance with COMAR 13A.08.04.05C(2). Therefore, this office finds a violation occurred.

Notwithstanding the violation, based on Finding of Fact #11, MSDE finds that the IEP team convened on June 11, 2024. The team reviewed the incident and determined that changes to the BIP were not required at the time. Therefore, no further student corrective action is required.

#### **TIMELINES:**

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. 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/ra

- c: Dr. Mark T Bedell, Superintendent, AACPS  
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