

October 15, 2024

Ms. Debrah Martin  
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Suite 139-W  
Largo, Maryland 20774

Ms. Trinell Bowman  
Associate Superintendent Special Education  
Prince George's County Public School  
John Carroll Center  
1400 Nalley Terrace  
Landover, Maryland 20785

RE: [REDACTED]  
Reference: #25- 037

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.

**ALLEGATIONS:**

On August 16, 2024, MSDE received a complaint from Ms. Debrah Martin, 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) concerning the above-referenced student.

MSDE investigated the following allegations:

1. The PGCPS did not ensure that the student was provided with the special education instruction and Occupational Therapy (OT) services required by the Individualized Education Program (IEP) since November 30, 2023, in accordance with 34 CFR § 300.101 and .323.
2. The PGCPS did not follow proper procedures when conducting a reevaluation of the student since November 30, 2023, in accordance with 34 CFR §§ 300.303-.306.
3. The PGCPS did not ensure that the IEP team considered the results of a private OT assessment since March 4, 2024, in accordance with 34 CFR § 300.502.
4. The PGCPS did not ensure that the OT assessment for the student was completed within the required timelines since March 2024, in accordance with 34 CFR §§ 300.303-.306 and COMAR 13A.05.01.06.

5. The PGCPs did not ensure that the student was provided with the special education instruction required by the IEP from a certified special education teacher during the 2023-2024 school year, in accordance with 34 CFR § 300.156 and COMAR 13A.12.02.
6. The PGCPs did not follow proper procedures when using physical restraint with the student since October 18, 2023, in accordance with COMAR 13A.08.04.05.
7. The PGCPs did not follow proper procedures when using seclusion with the student since November 8, 2023, in accordance with COMAR 13A.08.04.05.

### **BACKGROUND:**

The student is 11 years old and is identified as a student with multiple disabilities (autism, emotional disability, other health impairment (OHI) under the IDEA. They attend [REDACTED] and have an IEP that requires the provision of special education instruction and related services.

### **ALLEGATIONS #1, #2, #3, #4 AND #5**

### **PROVISION OF SPECIAL EDUCATION INSTRUCTION AND OT SERVICES, PROPER PROCEDURES FOR CONDUCTING A REEVALUATION OF THE STUDENT, CONSIDERATION OF THE RESULTS OF A PRIVATE OT ASSESSMENT, PROPER PROCEDURES FOR COMPLETING AN OT ASSESSMENT IN THE REQUIRED TIMELINE AND PROVISION OF SPECIAL EDUCATION INSTRUCTION BY A CERTIFIED SPECIAL EDUCATION TEACHER**

### **FINDINGS OF FACT:**

1. The student's IEP developed on December 1, 2022, reflects an annual review date of November 30, 2023. The student's IEP requires the provision of:
  - 31 hours and 30-minutes weekly of special education instruction outside the general education classroom provided by the special education teacher or the instructional assistant; and
  - One hour weekly of counseling services outside the general education classroom provided by the school social worker.

The IEP reflects that the student requires a BIP.

The IEP reflects that the parents gave permission for the use of seclusion and restraint. The IEP requires the use of restraint and seclusion.

2. On November 30, 2023, the IEP team convened to review and revise the IEP, discuss educational placement, Extended School Year (ESY) services, and behavior/supports. The Prior Written Notice (PWN) generated following this IEP team meeting reflects that the IEP team considered the student's current IEP, curriculum based assessments, present levels of performance, teacher input, parental input, informal assessments, observation, functioning levels, grades, attendance, input from the related service providers (as appropriate), progress reports, and behavior data to determine that the student's educational needs exceed the special education and related services available in a public PGCPs program.

The PWN further reflects that the IEP team proposed new IEP goals, objectives, supplementary aids and services, services, and instructional and assessment accommodations, as well as reviewed the most recent Functional Behavior Assessment (FBA) and Behavior Intervention Plan (BIP). "Due to the intensity/frequency of the behaviors, [the student] at times, requires crisis intervention in the form of restraint and seclusion. The parent provided written consent for the use of restraint and seclusion."

3. The student's IEP developed on November 30, 2023, requires the provision of:
  - a monthly OT consultation provided by the OT therapist or assistant, for a minimum of one 30-minute session per month;
  - 31 hours weekly of special education instruction outside the general education classroom provided by the special education teacher or the instructional assistant from November 30, 2023, to August 22, 2024; and
  - 26 hours weekly of special education instruction outside the general education classroom provided by the special education teacher or the instructional assistant from August 26, 2024, to November 29, 2024.

The IEP reflects that the student requires a Behavior Intervention Plan (BIP).

The IEP includes the use of restraint and seclusion. The IEP reflects that the parents gave permission of the use of seclusion and restraint.

4. On March 5, 2024, the IEP team convened to review and revise the IEP, discuss assessments, and behavior supports. The PWN generated following this IEP team meeting reflects that the IEP team discussed a 2019 private psychological assessment that was previously discussed in May 2021. The PWN also reflects that the IEP team did not agree to conduct an OT assessment. It is further reflected that the IEP team agreed to amend the BIP to include a trial of different sensory strategies and collect data.

There is no documentation that a private OT assessment was provided by the family at this IEP team meeting.

5. On March 23, 2024, the IEP team convened to review and revised the student's IEP and discuss the educational placement. The PWN generated following this IEP team meeting reflects that the IEP team reviewed new assessment data including the Woodcock Johnson IV (WJ-IV), Reynolds Intellectual Assessment Scales 2 (RIAS-2), Autism Spectrum Rating Scale (ASRS), and the Behavior Assessment System for Children 3 (BASC-3).

The PWN further reflects that the IEP team conducted a comprehensive psychological evaluation to assist in determining which disability is most impacting the student in the educational environment. The PWN reflects that the IEP team determined that OHI, emotional disability, and autism most accurately reflected the student's needs. The PWN reflects that the parents were not in agreement with the eligibility coding. The PWN reflects that the IEP team agreed to conduct an OT assessment.

There is no documentation that a private OT assessment was provided at this IEP team meeting.

6. On May 9, 2024, consent for the PGCPs OT assessment was provided.
7. There is documentation that the agreed upon PGCPs OT assessment was completed on June 6, 2024.

8. On August 22, 2024, the IEP team convened to review and revise the student's IEP and discuss educational placement. While the PWN generated following this IEP team meeting reflects that the IEP team considered the most recent assessments in their decisions, it does not clearly reflect that the PGCPs OT assessment was reviewed as part of this process.

The PWN further reflects that the IEP team agreed to remove the use of seclusion and restraint from the student's IEP.

There is no documentation that a private OT assessment was provided at this IEP team meeting.

9. There is documentation that the student was provided with the special education instruction as required by the IEP since November 30, 2023.
10. While there is some documentation of the provision of the OT consult, it does not demonstrate consistent provision as required by the IEP.
11. There is documentation that the student was provided special education instruction from either a certified special education teacher or an instructional assistant as required by the IEP, since the start of the 2023-2024 school year.

## **CONCLUSIONS:**

### **Allegation #1 Special Education Instruction**

Based upon the Findings of Fact #3 and #9, MSDE finds that the PGCPs did ensure that the student was provided with the special education instruction required by the IEP since November 30, 2023, in accordance with 34 CFR § 300.101 and .323. Therefore, this office does not find a violation occurred concerning this aspect of the allegation.

### **Allegation #1 OT Services**

Based upon the Findings of Fact #3 and #10, MSDE finds that the PGCPs did not ensure that the student was provided with the OT services required by the IEP since November 30, 2023, in accordance with 34 CFR § 300.101 and .323. Therefore, this office finds a violation occurred concerning this aspect of the allegation.

### **Allegation #2 Proper Procedures for Conducting a Reevaluation of The Student**

In this case, the complainant alleges that the emotional disability coding criteria was not reviewed properly; however, the March 23, 2024, PWN reflects that it was considered part of a reflection of the student's disabilities.

The complaint further alleges that the BIP was not reviewed; however, the PWNs generated after the IEP team meetings reflect that it was reviewed.

Based upon the Findings of Fact #1 through #5, MSDE finds that the PGCPs did follow proper procedures when conducting a reevaluation of the student since November 30, 2023, in accordance with 34 CFR §§ 300.303- .306. Therefore, this office does not find a violation occurred concerning the allegation.

### **Allegation #3 Consideration of The Results of a Private OT Assessment**

Based upon the Findings of Fact #4, #5, and #8, MSDE finds that the PGCPs was not required to consider the results of a private OT assessment because there is no documentation that it was provided to them, since March 4, 2024, in accordance with 34 CFR § 300.502. Therefore, this office does not find a violation occurred concerning the allegation.

### **Allegation #4 Proper Procedures for Completing an OT Assessment in The Required Timeline**

Based upon the Findings of Fact #5- #8, MSDE finds that the PGCPs did ensure that the OT assessment of the student was completed within the required timelines since March 2024, in accordance with 34 CFR §§ 300.303-.306 and COMAR 13A.05.01.06. Therefore, this office does not find a violation occurred concerning the allegation.

### **Allegation #5 Provision of Special Education Instruction by a Certified Special Education Teacher**

Based upon the Findings of Fact #1, #3, and #11, MSDE finds that the PGCPs did ensure that the student was provided with the special education instruction required by the IEP from a certified special education teacher during the 2023- 2024 school year, in accordance with 34 CFR § 300.156 and COMAR 13A.12.02. Therefore, this office does not find a violation occurred concerning the allegation.

## **ALLEGATION #6 PROPER PROCEDURES WHEN USING PHYSICAL RESTRAINT**

### **FINDINGS OF FACT:**

12. On October 18, 2023, the student was involved in an incident that resulted in the use of a restraint. The restraint report reflects that the student was restrained for 21 minutes using the “vertical immobilization” and “horizontal immobilization” holds. The documentation from this event does not clearly reflect that the student was demonstrating imminent serious physical harm to himself or others prior to the implementation of the restraint.

The report further reflects:

- Precipitating event - demand/ request and unexpected schedule/ routine change;
- Alternative efforts made to deescalate – no documentation;
- During the restraint the student - hitting, kicking, and head butting;
- The restraint was monitored by one qualified health care provider and implemented by the teacher, two teacher’s assistants, and one behavior specialist. All staff members who observed and implemented the restraint signed the restraint report;
- Following the restraint the student was seen by the school nurse; and
- There is no documentation that an administrator notified the parent of the restraint.

13. On February 8, 2024, the student was involved in an incident that resulted in the use of a restraint. The documentation from this event reflects that the student was restrained for three minutes using the “double Sunday stroll (two-person vertical immobilization)” hold. The documentation does not clearly reflect that the student was demonstrating imminent serious physical harm to himself or others prior to the implementation of the restraint.

The report further reflects:

- Precipitating event - demand/ request and interruption to activity;
- Alternative efforts made to deescalate – redirection, “response blocking”, and planned ignoring;
- During the restraint the student – talking, continuous resistance, crying, and yelling/screaming;
- The restraint was observed and monitored by one qualified health care provider and one behavior support member, and implemented by one teacher assistant, and one behavior specialist. All staff members who observed and implemented the restraint signed the restraint report;
- Following the restraint the student it is unclear if the student was seen by the school nurse; and
- There is documentation that a staff member notified the parent.

14. On March 20, 2024, the student was involved in an incident that resulted in the use of a restraint. The restraint report reflects that the student was restrained for 15 minutes using the “double Sunday stroll and a “three-person immobilization” hold. The documentation does not clearly reflect that the student was demonstrating imminent serious physical harm to himself or others prior to the implementation of the restraint.

15. The report further reflects:

- Precipitating event - demand/ request;
- Alternative efforts made to deescalate – redirection, “blocking”, talking with staff, and offering choices;
- During the restraint the student – no documentation;
- The restraint was observed and implemented by four staff members. All staff members who observed and implemented the restraint signed the restraint report;
- Following the restraint the student was seen by the school nurse; and
- There is no documentation that a staff member notified the parent.

### **CONCLUSIONS:**

Based upon the Findings of Fact #12 through #14, MSDE finds that the PGCPs did not follow proper procedures when using physical restraint with the student since October 18, 2023, in accordance with COMAR 13A.08.04.05. Therefore, this office finds a violation occurred concerning the allegation.

### **ALLEGATION #7 PROPER PROCEDURES WHEN USING SECLUSION**

#### **FINDINGS OF FACT:**

16. On November 8, 2023, and January 30, 2024, the student was involved in an incident that resulted in the use of seclusion. The reports generated after these events reflect that the student was secluded for a time less than 30-minutes; that less intrusive, nonphysical interventions were utilized; and that his behaviors met the criteria for demonstrating imminent serious physical harm.

There is documentation that the seclusion was conducted by trained staff.

While there is documentation that a health care practitioner was consulted regarding the November 8, 2023, incident of seclusion, there is no documentation that the health care practitioner observed the incident of seclusion.

There is no documentation that a health care practitioner observed or was consulted during the January 30, 2023, incident of seclusion.

17. On November 15, 2023, December 13, 2023, February 6, 2024, February 8, 2024, February 12, 2024, February 13, 2024, February 27, 2024, April 9, 2024, and April 11, 2024, the student was involved in incidents that resulted in the use of seclusion. The reports generated after these events reflect that the student was secluded for a time less than 30-minutes. The information reflected in the reports does not clearly demonstrate that less intrusive, nonphysical interventions were utilized. The documentation does not clearly reflect that the student was demonstrating imminent, serious physical harm to himself or others prior to the implementation of the seclusions.

There is documentation that the seclusion was conducted by trained staff.

There is documentation that a health care practitioner observed the November 15, 2023, February 8, 2024, February 12, 2024, and February 27, 2024, incidents of seclusion.

While there is documentation that a health care practitioner was consulted regarding the April 9, 2024, incident of seclusion, there is no documentation that they observed the incident of seclusion.

There is no documentation that a health care practitioner observed or was consulted during the December 13, 2023, February 6, 2024, February 13, 2024, and April 11, 2024, incidents of seclusion.

### **CONCLUSIONS:**

Based upon the Findings of Fact #16 and #17, MSDE finds that the PGCPSS did not follow proper procedures when using seclusion with the student on November 8, 2023, November 15, 2023, December 13, 2023, January 30, 2024, February 6, 2024, February 8, 2024, February 12, 2024, February 13, 2024, February 27, 2024, April 9, 2024, and April 11, 2024, in accordance with COMAR 13A.08.04.05. Therefore, this office finds a violation occurred concerning the allegation.

### **CORRECTIVE ACTIONS AND 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.

MSDE has established reasonable time frames below to ensure that noncompliance is corrected in a timely manner.<sup>1</sup> 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.

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<sup>1</sup> 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, 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.

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. Nicole Green, Compliance Specialist, Family Support and Dispute Resolution, MSDE, to ensure the effective implementation of the action.<sup>2</sup> Ms. Green can be reached at (410) 767-7770 or by email at [nicole.green@maryland.gov](mailto:nicole.green@maryland.gov).

### **Student-Specific**

MSDE requires the PGCPs to provide documentation, by December 2, 2024, that the IEP team has taken the following action:

- a. Provided the student with consistent OT services as required by the IEP;
- b. Conducted an IEP team meeting to determine the amount and nature of compensatory services or other remedy to redress the violations identified in this Letter of Finding. The IEP team must consider:
  - i. The student's present levels of functioning and performance;
  - ii. The levels of functioning and performance that were projected to have demonstrated by the end of school year 2023-2024;
  - iii. The services needed to remediate the violations identified in this investigation; and
- c. Developed a plan for the implementation of the services within one year of the date of this Letter of Findings.

The PGCPs must ensure that the parent is provided with prior written notice of the team's decisions. The parent maintains the right to request mediation or to file a due process complaint to resolve any disagreement with the team's decisions.

### **School-Based**

By January 31, 2025, the PGCPs must conduct professional development at [REDACTED] to address the proper use of restraint and seclusion, in compliance with COMAR regulations. In addition, the PGCPs must provide professional development to staff at [REDACTED] on proper documentation and completion of the required forms reflecting the need for restraint or seclusion of a student. PGCPs must conduct quarterly monitoring at [REDACTED] of all students placed by the LEA at that site, reviewing the use of restraint and seclusion, ensuring compliance with COMAR, the proper documentation of the imminent threat of physical harm to the student or others, and the absolute need to implement the intervention. Quarterly reporting will be due on January 31, 2025, March 31, 2025, June 30, 2025, and September 30, 2025.

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

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<sup>2</sup> MSDE will notify the public agency's Director of Special Education of any corrective action that has not been completed within the established timeframe.



compelling reason 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/sd

c: Millard House, II, Superintendent, PGCP  
Keith Marston, Compliance Instructional Supervisor, PGCP  
Lois Jones-Smith, Compliance Liaison, PGCP  
Darnell Henderson, General Counsel, PGCP  
William Fields, Associate General Counsel, PGCP  
[REDACTED], Principal, [REDACTED]  
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  
Nicole Green, Compliance Specialist, MSDE  
Tracy Givens, Section Chief, Dispute Resolution, MSDE  
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