



December 16, 2013

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Dr. Kim Hoffmann
Executive Director, Special Education
Baltimore City Public Schools
200 East North Avenue, Room 204-B
Baltimore, Maryland 21202

RE: XXXXX
Reference: #14-031

Dear Parties:

The Maryland State Department of Education (MSDE), Division of Special Education/Early Intervention Services (DSE/EIS), 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 October 17, 2013, the MSDE received a complaint from Ms. XXXXXXXXXXXXX, hereafter, “the complainant,” on behalf of her son, the above-referenced student. In that correspondence, the complainant alleged that the Baltimore City Public Schools (BCPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to the above-referenced student. The MSDE investigated the allegations listed below.

1. The BCPS has not ensured that the student was provided with the supports required by the Behavior Intervention Plan (BIP) since October 17, 2012¹, in accordance with 34 CFR §§300.101 and .323.
2. The BCPS has not ensured that the student’s Individualized Education Program (IEP) and BIP address his behavior needs since October 17, 2012, in accordance with 34 CFR §§300.101, .320, and .324.

¹ The complaint included allegations of violations that occurred more than a year before the date it was received. The complainant was advised, in writing, that this office may only investigate allegations of violations which occurred not more than one year prior to the receipt of the State complaint (34 CFR §300.153).

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3. The BCPS has not ensured that the complainant was provided with a written invitations to the IEP team meetings that occurred since January 2013, in accordance with 34 CFR§300.322 and COMAR 13A.05.01.07.
4. The BCPS has not ensured that proper procedures have been followed when behavior interventions were used with the student since January 2013, in accordance with COMAR 13A.08.04.02, .03, and .05.
5. The BCPS has not ensured that the complainant was provided with prior written notice of the decisions made at the IEP team meetings held since January 2013, in accordance with 34 CFR §300.503.

INVESTIGATIVE PROCEDURES:

1. Ms. Koliwe Moyo, Education Program Specialist, MSDE, was assigned to investigate the complaint.
2. On October 17, 2013, the MSDE sent a copy of the complaint, via facsimile, to Dr. Kim Hoffmann, Executive Director of Special Education, BCPS; and Ms. Nancy Ruley, Associate Counsel, BCPS.
3. On October 23, 2013, Ms. Moyo conducted a telephone interview with the complainant and her educational advocates, Ms. Susana Barrios and Ms. Angel Leigh, to clarify the allegations to be investigated. Translation services were used during the telephone interview since English is not the complainant's native language.
4. On October 28, 2013, the MSDE sent correspondence² to the complainant that acknowledged receipt of the complaint and identified the allegations subject to this investigation. On the same date, the MSDE notified Dr. Hoffmann of the allegations and requested that her office review the alleged violations.
5. On November 7, 2013, Ms. Moyo conducted a telephone interview with the Ms. Barrios regarding allegations being investigated.
6. On November 8, 2013, Ms. Moyo and Ms. Tyra Williams, Education Program Specialist, MSDE, conducted a site visit at XXXXXXXXX to conduct a review of the student's educational record, and interviewed the following school staff:
 - a. Ms. XXXXXX, Principal;
 - b. Ms. XXXXXXXXXXXX, Special Education Teacher;
 - c. Ms. XXXXXXXXXXXXXX, IEP Chair Person;

² A translated copy of the correspondence was also sent to the complainant in her native language.

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- d. Ms. XXXXXXXXXXXX, XXXX Support Teacher;
- e. Ms. XXXXXXXXXXXX, Special Education Teacher; and
- f. Ms. XXXXXXX, School Social Worker.

Mr. Darnell Henderson, Legal Counsel, BCPS, attended the site visit as a representative of the BCPS and to provide information on the BCPS policies and procedures, as needed.

- 7. On November 8, 2013, the complainant provided the MSDE with additional documentation, via electronic mail, regarding the allegations being investigated.
- 8. On November 15, 2013, the MSDE sent correspondence to the complainant and the BCPS staff providing additional clarification the allegations being investigated
- 9. On November 21, 2013, the BCPS provided the MSDE with documentation from the student's educational record. On the same day, Ms. Moyo and Mr. Henderson toured the XXXXXXX Program located at the XXXXXXXXXXXX.
- 10. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
 - a. Correspondence and attachments from the complainant to the MSDE, received on October 17, 2013;
 - b. Psychological assessment report, dated September 1, 2011;
 - c. Functional Behavioral Assessment (FBA), dated November 11, 2011;
 - d. BIP, dated November 11, 2011;
 - e. IEP, dated January 18, 2012;
 - f. Counseling services logs since October 2012;
 - g. Daily point sheets since October 2012;
 - h. Reports of the use of behavior interventions since October 2012;
 - i. Communication log from December 20, 2012 to April 3, 2013;
 - j. IEP team meeting invitation, dated December 20, 2012;
 - k. BCPS XXXXXX program manuals, dated August 1, 2012 and October 2, 2013;
 - l. Social worker report of progress, dated January 8, 2013;
 - m. IEP, dated January 17, 2013;
 - n. Consent for assessment, dated; January 17, 2013;
 - o. IEP team meeting invitation, dated March 21, 2013;
 - p. Educational assessment report, dated March 21, 2013;
 - q. Reports of progress toward achieving the annual goals, dated March 22, 2013 and June 12, 2013;
 - r. Teacher reports of progress, dated April 11, 2013;
 - s. FBA, dated April 11, 2013;
 - t. BIP, dated April 11, 2013;
 - u. IEP and IEP meeting attendance sheet, dated April 11, 2013;
 - v. IEP team meeting notes, dated April 11, 2013;
 - w. Disciplinary action report, dated May 31, 2013;

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- x. IEP receipt signed by the student's teachers in August 23, 2013;
- y. Electronic mail (email) between the complainant to BCPS staff, dated August 30, 2013 to November 5, 2013;
- z. School health nursing report, dated September 10, 2013;
- aa. IEP team meeting invitation, dated October 2, 2013;
- bb. Social worker report of progress, dated October 14, 2013;
- cc. Teacher reports of progress, dated October 14, 2013;
- dd. Disciplinary action report, dated October 23, 2013;
- ee. Report of progress toward achieving the annual goals, dated November 4, 2013;
- ff. IEP team meeting invitation, dated November 25, 2013;
- gg. Maryland Online IEP "parent contact log" from the 2013-2014 school year;
- hh. Communication log from October 2, 2013 to December 6, 2013;
- ii. Work samples and flashcard from the 2013-2014 school year;
- jj. Excerpts from the XXXXXXXXXXXX Visitors Log for the 2013 – 2014 school year; and
- kk. Correspondence from the MSDE to the Baltimore City Social Services, dated October 18, 2013.

BACKGROUND:

The student is ten (10) years old and attends XXXXXXXXXXXX. He is identified as a student with an Other Health Impairment under the IDEA related to Attention Deficit Hyperactivity Disorder (ADHD) and receives special education instruction and related services (Docs. a, d, e, j, k, m, q, t - x, aa, and ff).

ALLEGATIONS #1, #2, AND #3: PROVISION OF BEHAVIORAL SUPPORTS, ADDRESSING THE STUDENT'S SOCIAL/EMOTIONAL/BEHAVIORAL NEEDS, AND PROVISION OF WRITTEN INVITATIONS TO IEP TEAM MEETINGS

Findings of Facts:

IEP and BIP in effect in October 2012

1. The Behavior Intervention Plan (BIP) in effect in October 2012 was developed on November 11, 2011. It required the provision of interventions to address the student's behaviors, including "yelling in the classroom, hitting classmates, throwing objects and eloping from the building." The BIP required that the student be provided with timed breaks within the classroom, choices of assignments, rewards for completing assignments, and positive reinforcement when he demonstrated appropriate behavior. It also required that the student's teachers ensure that consequences are consistently applied when the student exhibits inappropriate behavior. The BIP also required that data be collected, on a daily basis, regarding the effectiveness of the interventions being provided (Doc. d).

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2. The IEP in effect in October 2012 was developed on January 18, 2012. The IEP included annual goals for the student to improve his behavior by utilizing “impulse control and frustration management strategies,” employing “prosocial behaviors” when experiencing frustration in the classroom, and demonstrating the ability to follow school rules with the provision of counseling support and redirection. The team determined that the IEP could be implemented in a separate special education classroom with the provision of supplementary aids and services, in a public school program designed to address the needs of students with behavioral issues (Doc. e).
3. The IEP required that the student be provided with special education instruction in a separate special education classroom and counseling as a related service for thirty (30) minutes, two times per month. The IEP required the provision of supplementary aides and services, including reduced distractions to assist the student with focusing and remaining on task, use of physical restraint to address the student’s “issue with anger management and difficulty with compliance,” anger management training to teach the student to make appropriate choices when he is angry with his peers, checks for understanding, chunking of texts, modified assignments to avoid overwhelming the student, and frequent changes in activities that provide the student opportunities to move (Doc. e).

January 17, 2013 IEP Team Meeting

4. There is documentation that on December 20, 2012, a written invitation to a January 17, 2013 IEP team meeting was given to the student to deliver to the complainant (Docs. j and i).
5. There is also documentation that on December 20, 2012, a written invitation to the January 17, 2013 IEP team meeting was mailed to the complainant (Doc. i).
6. On December 21, 2012, school staff spoke with the complainant by telephone and confirmed that she would attend the January 17, 2013 IEP team meeting (Doc. i).
7. There is documentation that, on January 17, 2013, the complainant contacted school staff, by telephone, and indicated that she would be unable to attend the IEP team meeting. However, there is no documentation that school staff offered an alternative date or alternative means for the complainant to participate in the meeting (Doc. i).
8. On January 17, 2013, the IEP team convened to begin a three (3) year reevaluation of the student. At the meeting, the team considered reports from the student’s teachers and the daily point sheets indicating that the student’s behavior had improved since the start of the school year. During the IEP team meeting, school staff reviewed the present levels of academic achievement and functional performance based on information from “teacher consultations, clinical sessions and parent discussions.” The IEP indicates that the student has made “marked progress” since the beginning of the school year, including a decrease in elopements, fewer aggressive and threatening statements to others and

increase in point on the daily point sheets. They also indicate that the student demonstrated the ability to work with peers and was able to “ignore the negative behaviors” of other students (Docs. f, g, h, l, and m).

9. At the IEP team meeting, the team also considered progress reports from the school social worker indicating that the student has made progress since the start of the school year, including staying in his assigned area, earning more points for displaying appropriate behavior, ignoring the negative behaviors of others and working with peers and calming himself quickly when he becomes upset. The school staff also noted that the student had not been disciplinarily removed from school since the start of the 2012-2013 school year (Docs. l).
10. Based on this information, the team decided that a separate goal for the student to decrease elopement was no longer necessary and that this behavior would be addressed through the remaining behavior goals. The team revised the IEP to indicate that the student would receive counseling for thirty (30) minutes each week in both a group and on an individual basis to work on his peer relationships and behavior. The team also determined that a Functional Behavior Assessment (FBA) and an educational assessment would be conducted. There is no documentation that the complainant participated in the IEP team meeting or provided consent for the assessments to be conducted (Docs. m, n, and review of the education record).

April 11, 2013 IEP Team Meeting

11. There is documentation that on March 21, 2013, the school staff spoke with the complainant via telephone to determine a date on which an IEP team meeting could be convened and that an April 11, 2013 date was agreed upon. There is documentation that a meeting invitation was generated on that same day, but no documentation that it was sent to the complainant (Docs. i and o).
12. On April 11, 2013, the IEP team reconvened, without the complainant, and considered information from the educational assessment report that the student is performing “significantly below average” in all subject areas. The report also indicates that the student is easily distracted and will distract other students. To address this issue, the report recommends that the student be provided with extra breaks, testing in a small group setting, extended time, and a change of schedule over multiple days to allow him to complete assignments. The team also considered information from the FBA report indicating that the student’s interfering behaviors included eloping from school, throwing objects, yelling at adults and being defiant. The report documents that the student displays behaviors in less structured settings, during transitions and that the behavior can be triggered by not getting attention or that a peer is being favored over him. The report recommends that the student be provided with supports, including a greeting each day with a compliments or encouragement, providing frequent praise and positive feedback, tasks that allow him to interact with peers, and earning time to work with a preferred peer (Docs. p-s, u, and v).

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13. The BIP was revised to include additional supports consistent with the recommendations in the assessment reports. The team decided that it would meet on May 9, 2013 and June 6, 2013 to review the effectiveness of the BIP. However, there is no documentation that a meeting has been convened for this purpose (Doc. t and review of the educational record).
14. There is documentation that the student was disciplinarily removed from school on May 31, 2013, for three (3) days for “participating in a disturbance” by eloping from school with other students (Doc. w).
15. The daily point sheets, progress reports completed by the student’s teacher, behavior intervention incident reports, and related service encounter logs document that the student is provided with the behavioral supports required by the BIP (Docs. f, g, h, l, and r.).

2013-2014 School Year

16. On August 30, 2013, the complainant requested that an IEP team meeting be convened to address her concerns regarding the student’s behavior following a report from the school staff that the student had displayed inappropriate behavior on August 28, 2013 (Doc. y).
17. On October 2, 2013, the school staff and the complainant scheduled an IEP team meeting with the complainant for October 23, 2013 (Doc. hh).
18. On October 23, 2013, the day of the IEP meeting, the school staff contacted the complainant to cancel the IEP team meeting because “the BCPS was not ready to proceed” (Doc. hh).
19. On October 24, 2013, the student was disciplinarily removed from school for three (3) days for physically attacking another student (Doc. dd).
20. There is no documentation that the IEP team has convened to consider the complainant’s concerns about the student’s behavioral needs (Review of educational record).
21. The daily point sheets, progress reports completed by the student’s teacher, behavior intervention incident reports, work samples, flash cards used as prompts for appropriate behaviors, and related service encounter logs document that the student has been provided with the behavioral supports, such as reminders about appropriate behavior, choices, points, rewards, and access to a preferred activity since the start of the 2013-2014 school year (Docs. f, g, h, x, bb, cc, ee and ii).
22. On November 25, 2013, the school staff sent a written IEP team meeting invitation for an IEP team meeting on December 17, 2013, by postal and electronic mail (email) (Docs. ff and hh).

Discussion/Conclusions:

Allegation #1: Provision of the Supports Required by the BIP

In order to provide a student with a Free Appropriate Public Education (FAPE), the public agency must ensure that the student receives the special education and related services determined by the IEP team (34 CFR §§300.101, .320, and .323).

In this case, the complainant alleges that the student has not been provided with the behavioral supports required by the BIP since October 2012. Based on the Findings of Facts #1 - #3, #8, #9, #15, and #21, the MSDE finds that there is documentation of the provision of the student the behavior supports required by the BIP since October 2012. Therefore, the MSDE does not find that a violation occurred with regard to this allegation.

Allegation #2: Addressing the Social/Emotional/Behavioral Needs of the Student

The public agency must ensure that an IEP is developed that includes a statement of the student's present level of academic achievement and functional performance, including how the disability affects the student's progress in the general curriculum, which is based on the evaluation data. The IEP must also include measurable annual goals designed to meet the needs that arise out of the student's disability, and the special education instruction and related services required to assist the student in achieving the goals (34 CFR §§300.101 and .320).

If the IEP team determines the need for additional data in order to determine present levels of performance, the public agency must obtain parental consent to obtain that data. The public agency must also ensure that the results of assessment procedures are used by the IEP team when it reviews, and as appropriate, revises the IEP; this must be completed within ninety (90) days of the recommendation to obtain the data (34 CFR §§300.101 and .320 and COMAR 13A.05.01.06).

In developing each student's IEP, the public agency must ensure that the IEP team considers the strengths of the student, the concerns of the parent for enhancing the education of the student, the results of the most recent evaluation, and the academic, developmental, and functional needs of the student. In the case of a student whose behavior impedes the student's learning or that of others, the team must consider the use of positive behavioral interventions and supports and other strategies, to address that behavior (34 CFR §300.324).

Based on the Findings of Facts #1 - #3, the MSDE finds that when developing the IEP in effect in October 2012, the IEP team considered information from the complainant, reports from the student's teachers and related service providers, evaluation data, and based on this information, developed the annual goals, and determined the special education instruction, and the supports needed to address the student's identified social and emotional needs, consistent with the data. Based on the Findings of Facts #8, #9, #15, and #21, the MSDE finds that school staff continuously monitored the student's progress with the provision of the services and supports,

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and determined strategies to address the student's identified behavioral needs from October 2012 until January 2013.

However, based on the Findings of Facts #7 - #21, the MSDE finds that the BCPS has not ensured that the complainant's input was considered when developing the IEP since January 2013, that parental consent was not obtained from the complainant to conduct assessments, or that an IEP team meeting has been convened to address the student's interfering behaviors since January 2013. Therefore, this office finds that violations have occurred with regard to this allegation since January 2013.

Allegation #3: Provision of a Written Invitation to IEP Team Meetings convened since January 2013

The public agency is required to take steps to ensure the 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 they will have an opportunity to attend and scheduling the meeting at a mutually agreed on time and place. To ensure parent participation, the school system must provide the parent with written notice at least ten (10) days in advance of the meeting. The notice must state the purpose, time, date, and location of the meeting, and who is expected to participate (34 CFR §300.322 and COMAR 13A.05.01.07).

If a parent cannot attend the IEP meeting, then the public agency is required to use other methods to ensure parent participation, including individual or conference telephone calls or other alternative means, such as video conferences (34 CFR §300.322 and .328).

The public agency may hold an IEP meeting without the parent in attendance only if the public agency has been unable to convince the parent to attend and has documented all such attempts to do so. If the public agency has not been able to convince the parent to attend, then the agency must keep a record of its attempts to arrange a mutually agreed-on time and place, such as:

- Detailed records of telephone calls made or attempted and the results of those calls;
- Copies of correspondence sent to the parent and any responses received; and
- Detailed records of visits made to the parent's home or place of employment and the results of those visits (34 CFR §300.322(d)).

In this case, the complainant alleges that school staff have not addressed her concerns about the student because she has not been afforded the chance to participate in the IEP team meeting since January 2013 and has not been provided with an alternate means of participating in the meetings held since January 2013 (Doc. a).

January 17, 2013 IEP Team Meeting

Based on the Finding of Fact #4 and #5, the MSDE finds that there is documentation that written notice was provided to the complainant more than (10) days in advance of the January 17, 2013, IEP team meeting. However, based on the Finding of Fact #7, the MSDE finds when school

staff became aware that the complainant was unable to attend the meeting, they did not provide her with the opportunity to participate in the meeting through an alternative method, such as via telephone conference call. Therefore, the MSDE finds that a violation occurred with regard to this aspect of the allegation.

April 11, 2013 IEP team meeting.

Based on the Finding of Fact #11, the MSDE finds that the school staff and the complainant spoke on the telephone and discussed dates in an effort to determine a mutually agreeable time to hold the meeting. However, subsequent to this telephone contact, the BCPS did not provide the complainant with written notice of the April 17, 2013 IEP team meeting, as required. Therefore, the MSDE finds that a violation occurred with respect to this aspect of the allegation.

ALLEGATION #4: **PROPER PROCEDURES WHEN USING BEHAVIOR**
INTERVENTIONS WITH THE STUDENT SINCE
JANUARY 2013

Findings of Facts:

23. There is documentation that restraint has been used with the student on twelve (12) occasions, since January 2013, when the student attempted to physically injure other students and when he attempted to elope from the school. There is also documentation that the school staff expressed concern to the complainant that the student risked serious injury if he succeeded in eloping from the building (Docs. a and h).
24. There is documentation that when school staff have used restraint with the student the restraint has been conducted by one (1) or two (2) staff members using the Crisis Prevention Institute (CPI)³ approved “holds” that require that the student’s arms remain in front of or to the side of his body. During these “holds,” the school staff either assist the student with moving from one area to another or ensure that he is held in a safe position to avoid injury to himself or others (Doc. h).
25. There is no documentation that the student was placed in a face-down position which restricted his ability to breathe, or that his arms were held and bent behind his back during the use of restraint. Following the use of restraint on August 26, 2013, school staff noted “normal redness on the forearms from the restraint,” but there is no documentation that the student sustained an injury from the use of restraint⁴ (Docs. h and review of the educational record).

³ CPI is an organization that provides training programs for the “safe management of disruptive and assaultive behavior” (www.crisisprevention.com).

⁴ Following receipt of this complaint, this office sent correspondence to the Baltimore City Department of Social Services, Office Child Protective Services, to report the complainant’s concerns that the student had been injured at school (Doc. a and).

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26. For each instance of restraint, the school staff documented the other interventions utilized, the precipitating event preceding the behavior which prompted the use of restraint, the behavior displayed by the student that led to the use of restraint, the names and signatures of school staff who used restraint with the student and those who observed the behavior that led to the use of restraint, the type of restraint used, the length of each incident, the student behavior and reaction during the restraint and the signature of the administrator informed of the use of the restraint (Docs. h and kk).
27. There is documentation that the complainant was notified of each incidence of restraint on the same day that restraint was used (Doc. h).
28. There is documentation that the student has been sent to the Support Room on thirty-seven (37) occasions since January 2013. Each time he was placed in the Support Room, a Support Referral Form/Anecdotal Report was completed by school staff. The reports indicated the reason for referral, the interventions used by staff prior to being sent to the Support Room, the behaviors displayed by the student while in the Support Room, and the amount of time the student was in the Support Room (Doc. h).
29. The "Support Room" is a designated therapeutic environment where a student can go by choice or staff referral for a time-out, therapeutic problem solving, mediation, de-escalation, or "physical crisis intervention." According to the school's manual, further indicates that a student is accompanied by a school staff member, who will instruct the student to sit quietly for five (5) minutes until calm. Following this, the staff member will begin to discuss with the student the behavior that resulted in the use of the Support Room and how the student can improve his behavior. The manual explains that the student is not provided with school work unless he is in the Support Room for more than fifteen (15) minutes (Doc. k).
30. There is no documentation that the student has been confined alone in any room from which the student is physically prevented from leaving (Docs. h and review of the education record).
31. There is no documentation that the school staff considered whether the student's removal from the classroom to the Support Room resulted in a change in placement that required the provision of disciplinary protections (Review of the educational record).
32. There is no documentation that the IEP team determined how often it would meet to review the use of behavior interventions with the student (Docs. m, u, and review of the educational record).

Discussion/Conclusions:

Use of Physical Restraint

Physical restraint means the use of physical force, without the use of any device or material, that restricts the free movement of all or a portion of the student's body. The use of physical restraint is prohibited in public agencies and nonpublic schools unless there is an emergency situation and physical restraint is necessary to protect a student or another person from imminent, serious physical harm after other less intrusive, nonphysical interventions have failed, or been determined inappropriate (COMAR 13A.08.04.05A(1)(a)).

Physical restraint must be discontinued as soon as the student is calm and its use may not exceed thirty (30) minutes (COMAR 13A.08.04.05A(1)(d)). When utilizing physical restraint, school personnel may not place a student in a face-down position. The school personnel may not place a student in any other position that will obstruct the student's airway or otherwise impair the student's ability to breathe. The school personnel may not place a student in a position that will obstruct a staff member's view of the student's face, restrict the student's ability to communicate distress, or place pressure on the student's head, neck, or torso. The school personnel may not straddle the student's torso (COMAR 13A.08.04.05A(1)(e)).

Further, each time that physical restraint is used, the school staff must document the incident. The school staff must document the other less intrusive interventions that have failed, or been determined inappropriate, the precipitating event immediately preceding the behavior that prompted the use of restraint, the behavior that prompted the use of restraint, the names of the school personnel who observed the behavior that prompted the use of restraint, and the names and signatures of the staff members implementing and monitoring the use of restraint (COMAR 13A.08.04.05A(3)(a)).

If restraint is used with a student with a disability, and the student's IEP or behavioral intervention plan includes the use of restraint or seclusion, the student's IEP or BIP must specify how often the IEP team shall meet to review or revise, as appropriate, the student's IEP or BIP (COMAR 13A.05.01 and 13A.08.03).

The documentation must include a description of the restraint event, including the type of restraint the length of time in restraint the student's behavior and reaction during the restraint, and the name and signature of the administrator informed of the use of restraint (COMAR 13A.08.04.05A(3)(b)). Each time restraint is used, the student's parent must be provided with verbal or written notification within twenty-four (24) hours, unless otherwise provided for in the student's BIP or IEP (COMAR 13A.08.04.05A(5)).

In this case, the complainant alleges that the student has sustained physical injuries as a result of the use of physical restraint. She alleges that the student reports that school staff put his arms behind his back and that when it occurred, it hurt and he felt like he could not breathe. She further reports that she was never notified of these incidents by the school staff.

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Based on the Findings of Facts #23 and #26, the MSDE finds that school staff documented that the behavior intervention was necessary to protect against imminent, serious physical harm after less intrusive nonphysical interventions failed or were determined inappropriate. Based on the Findings of Facts #23 - #26, the MSDE further finds that the school staff documented the use of restraint in accordance with the requirements, and that the documentation does not support the allegation that the behavior intervention was used in the manner alleged or that the student sustained physical injuries as a result of the use of this intervention. Based on the Finding of Fact #27, the MSDE further finds that there is documentation that the complainant was informed of each incident of physical restraint, in accordance with the regulations.

However, based on the Finding of Fact #32, the MSDE finds that there is no documentation that the IEP team determined how often it would meet to review the use of restraint with the student. Therefore, the MSDE finds that a violation occurred with respect to this aspect of the allegation.

Use of Seclusion

Seclusion is defined as the confinement of the student, alone in a room, from which the student is physically prevented from leaving. The use of seclusion is prohibited in public agencies and nonpublic school unless specific requirements are met.

In this case, the complainant alleges that the student is removed from the classroom to a "punishment room" also known as the "Support Room," which she believes constitutes the use of seclusion with the student (COMAR 13A.08.04.04).

Based on the Findings of Facts #28 - #30, the MSDE finds that the documentation does not support the allegation that seclusion is used with the student. Therefore, this office does not find that a violation occurred with respect to this aspect of the allegation.

Use of Exclusion

Exclusion means the removal of a student to a supervised area for a limited period of time during which the student has an opportunity to regain self-control and is not receiving instruction, including special education, related services, or support (COMAR 13A.08.04.02).

The school personnel must ensure that each period of exclusion is appropriate to the developmental level of the student and the severity of the behavior exhibited and, in no case, should the use of exclusion exceed thirty (30) minutes. The school personnel must also monitor a student placed in exclusion and provide the student with an explanation of the behavior that resulted in the removal and instructions on the behavior required to return to the learning environment (COMAR 13A.08.04. 04).

If a student with a disability has experienced excessive periods of exclusion which may have resulted in a change of placement, then the school personnel determine if a change in placement has occurred. If so, it must ensure that the student is provided with the disciplinary protections, including the special education and related services that will allow the student to progress in the general curriculum and advance towards achieving the annual goals in the IEP. Following the

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determination that a change in placement has occurred, the IEP team must also meet to review the student's behavioral intervention plan and IEP to address the behavior that resulted in the removal (34 CFR §300.530, COMAR 13A.08.04.04(B), 13A.08.04.04(C), and 13A.08.04.04(D)).

Based on the Findings of Facts #28 - #30, the MSDE finds that the student's frequent removal from the classroom to the Support Room constituted exclusion under the regulations. Based on the Finding of Fact #31, the MSDE further finds that school staff did not consider whether frequent exclusion of the student from the classroom resulted in a change in educational placement for which the IDEA disciplinary protections must be provided. Therefore, the MSDE finds that a violation occurred.

ALLEGATION #5: PROVISION OF PRIOR WRITTEN NOTICE OF THE DECISIONS MADE SINCE THE JANUARY 2013 IEP TEAM MEETING

Findings of Facts:

33. The communication log maintained in the student's education record indicates that school staff sent a consent form to the complainant following the January 17, 2013 IEP team meeting in order to obtain her consent to conduct assessments that were recommended by the team at the meeting. The school staff also made an unsuccessful attempt to contact the complainant, by phone, to "explain the form" using school staff who spoke Spanish. However, there is no documentation that the consent form provided to the complainant was translated into Spanish, which is her native language (Doc. i and review of educational record).
34. There is no documentation that the complainant was provided with written notice of the decisions made at the January 17, 2013 IEP team meeting in either English or Spanish (Doc. i and review of educational record).
35. There is no documentation that the complainant was provided with written notice of the decisions made at the April 11, 2013 IEP team meeting nor is there documentation of any meetings occurring subsequent to the April 11, 2013 IEP team meeting (Review of the educational record).

Discussion/Conclusions:

The public agency is required to provide the parent of a student with a disability with written notice before proposing or refusing to initiate or change the identification, evaluation, or educational placement of the student or the provision of a FAPE to the student. This notice must include a description of the action proposed or refused, an explanation of the action, a description of each evaluation procedure, assessment, record, or report used as a basis for the decision. It must also include a statement that the parent of a student with a disability have protection under the procedural safeguards and the means by which a copy of the description of the safeguards can be obtained, sources for parent to contact to obtain assistance in the

understanding the provisions, a description of other options that the IEP team considered and the reasons why those options were rejected, and a description of other factors that are relevant to the agency's proposal or refusal (34 CFR §300.503).

The written notice of the decisions made at the IEP team meeting must be provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so. If the native language or other mode of communication of the parent is not a written language, the public agency must take steps to ensure that the notice is translated orally or by other means to the parent in his or her native language or other mode of communication; that the parent understands the content of the notice; and that there is written evidence that the public agency has taken steps to ensure that these actions have occurred (34 CFR §300.503).

Based on the Findings of Fact #33 - #35, the MSDE finds that the BCPS did not ensure that the complainant was provided with written notice of the team's decisions from the January 17, 2013 and the April 11, 2013 IEP team meeting, as required. Therefore, the MSDE finds that violations occurred with regard to this allegation.

CORRECTIVE ACTIONS/TIMELINES:

Student-Specific

The MSDE requires that the BCPS provide documentation by February 28, 2014 that the IEP team, including the complainant, has considered the complainant's concerns and reviewed and revised the IEP, as appropriate, to address the student's social, emotional, and behavioral needs. The BCPS must also provide documentation that the team has determined the *compensatory services*⁵ or other remedy needed for the violations identified during this investigation.

The BCPS must provide the complainant with proper written notice of the determinations made at the IEP team meeting including a written explanation of the basis for the determinations, in her native language of Spanish, as required by 34 CFR §300.503. If the complainant disagrees with the IEP team's determinations, she maintains the right to request mediation or file a due process complaint, in accordance with IDEA.

School-Based

The MSDE requires that BCPS provide documentation by February 28, 2014 of the steps taken to ensure that at XXXXXXXXXX:

- a) Proper written parental consent is obtained prior to conducting assessments, and that the written consent is requested in each parent's native language;

⁵ Compensatory services, for the purposes of this letter, mean the determination by the IEP team as to how to remediate the denial of appropriate services to the student (34 CFR §300.151).

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- b) The IEP team meeting are convened at mutually convenient times to ensure that the parent have the opportunity to participate;
- c) The parent is offered participation in IEP team meetings through an alternative means if they are unable to attend a meeting that had been scheduled for a mutually convenient date;
- d) The parent is provided with written invitations to IEP team meetings, in accordance with the regulations;
- e) The IEP and BIP specifies when the IEP team will meet to review the program if restraint is included in the program;
- f) The disciplinary procedures are provided to student who experience excessive exclusion from the classroom that constitutes a change in educational placement; and
- g) The parent is provided with proper prior written notice of IEP teams in their native language.

If the school system determines that the regulatory requirements are not being implemented, the school system must identify the actions that will be taken to ensure that the violations do not recur. The school system must submit a follow-up report to document correction within ninety (90) days of the initial date that the school system determines non-compliance.

Upon receipt of this report, the MSDE will verify the data to ensure continued compliance with the regulatory requirements, consistent with the requirements of the OSEP. Additionally, the findings in the Letter of Findings will be shared with the MSDE's Policy and Accountability Branch, Accountability and Monitoring Section, for its consideration during present or future monitoring of the BCPS.

Documentation of all corrective actions taken is to be submitted to this office to: Attention: Chief, Family Support and Dispute Resolution Branch, Division of Special Education/Early Intervention Services, MSDE.

TECHNICAL ASSISTANCE:

Technical assistance is available to the parties through Mrs. Martha J. Arthur, Education Program Specialist, MSDE. Mrs. Arthur may be contacted at (410) 767-0255.

Please be advised that the BCPS and the complainant have the right to submit additional written documentation to this office within fifteen (15) days of the date of this letter if they disagree with the findings of fact or conclusions reached in this Letter of Findings. The additional written documentation must not have been provided or otherwise available to this office during the complaint investigation and must be related to the issues identified and addressed in the Letter of Findings. If additional information is provided, it will be reviewed and the MSDE will determine if a reconsideration of the conclusions is necessary.

Upon consideration of this additional documentation, this office may leave its findings and conclusions intact, set forth additional findings and conclusions, or enter new findings and

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conclusions. Pending the decision on a request for reconsideration, the school system must implement any corrective actions consistent with the timeline requirements as reported in this Letter of Findings.

Questions regarding the findings, conclusions and corrective actions contained in this letter should be addressed to this office in writing. The complainants and the school system 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 FAPE for the student, including issues subject to the State complaint investigation, consistent with the IDEA. The MSDE recommends that this Letter of Findings be included with any request for mediation or due process.

Sincerely,

Marcella E. Franczkowski, M.S.

Assistant State Superintendent

Division of Special Education/Early Intervention Services

MEF/km

cc : Tisha Edwards
Charles Brooks
Nancy Ruley
Darnell Henderson
XXXXXXX
Dori Wilson
Anita Mandis
Koliwe Moyo
Martha J. Arthur