



Office of the State Superintendent of Education  
DISTRICT OF COLUMBIA  
MAYOR ADRIAN M. FENTY

[REDACTED]

[REDACTED]

[REDACTED]

District of Columbia Public Schools

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

RE: State Complaint # 009-12

Student Nar

Date of Birth: [REDACTED]

### LETTER OF DECISION

#### Procedural Background

The Office of the State Superintendent of Education (OSSE) received a State Complaint from [REDACTED], hereinafter "complainant," on [REDACTED] Y [REDACTED] M [REDACTED] D [REDACTED], alleging violations in the special education program at [REDACTED], specifically regarding [REDACTED] hereinafter "student." The complaint alleged that the District of Columbia Public Schools (DCPS) failed to fulfill its responsibility with regard to the student; specifically, on [REDACTED] [REDACTED] the student was physically restrained with the use of a double arm bar hold by staff members at [REDACTED] campus, hereafter "[REDACTED]" The complaint further alleged that during the time of the restraint, the student posed no risk to students or staff and there was not an emergency situation warranting any restraint. This Letter of Decision is the report of the final results of OSSE's investigation.

#### Complaint Issue

The allegations raised in the complaint, and further clarified by a review of documents and interviews, raised the following issue under the jurisdiction of the OSSE, State Complaint Office:

1. In the [REDACTED] school year, whether the DCPS placed a student in a nonpublic school, [REDACTED], that allowed aversive intervention in its policy or practice.

## Investigative Procedure

[REDACTED]  
[REDACTED] d [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

## Findings of Fact

### Incident

1. The student was placed by DCPS in the nonpublic school [REDACTED], in the [REDACTED] school year.
2. [REDACTED] has a Certificate of Approval (COA) from the District of Columbia.
3. The student's [REDACTED] individualized education program (IEP) and behavioral intervention plan (BIP) did not include the use of physical restraint.
4. On [REDACTED], the student was involved in a verbal altercation with a teacher in a classroom.
5. In response to this incident of misconduct, two staff members of [REDACTED] physically restrained the student to escort the student to the time-out room.
6. The physical restraint was a "double arm bar."
7. The student has a propensity to hyperventilate and vomit while agitated.
8. There is no evidence that staff attempted counseling or other non-physical intervention options prior to being restrained.
9. There is no evidence that student posed a risk of "imminent, serious, physical harm" to [REDACTED] or others at the time of the physical restraint.
10. After the student and a staff member fell while being escorted to the time-out room, a "post-fall protective hold" was used by staff to prevent further injury.
11. The protective hold of the student was in a face down position on the floor.
12. Upon receipt of the complaint, the DCPS investigated the [REDACTED] incident regarding the student. DCPS, through its investigation, made the following determinations:
  - a. The double arm bar was not proportionate, not the least intrusive, nor the last resort to control the student.
  - b. The staff at [REDACTED] restrained the student prematurely prior to other options being exhausted.
  - c. Past instances of hyperventilation should have cautioned staff that positioning the student against the floor was particularly dangerous and inappropriate.
  - d. The Student should have been placed in a seating position where any physical injury could have been more easily identified and where [REDACTED] airway would remain unobstructed until the situation calmed.
  - e. Even if the protective hold was permissible, it was "improperly applied and dangerous to the student."



13. All staff involved in the incident had certification in Therapeutic Aggression Control Techniques. This training included proper hold techniques and when a hold is appropriate.
14. Consistent with [REDACTED] policy, the incident was documented, including the names and signature of personnel who either observed or participated in the restraint, the signature of the administrator informed of the restraint, a narrative of the event including less intrusive intervention, the precipitating event, the student's reaction to the restraint and the details of the restraint.
15. There was no evidence that DCPS, police or any child protective service agencies were called to review or investigate the incident.
16. Consistent with [REDACTED] policy, the student's parent was notified and the notification was within 10-15 minutes after the incident.
17. No staff members were disciplined in any way because of the [REDACTED] incident with the student.
18. An IEP meeting was held for the student on [REDACTED], however, this meeting was not held within ten (10) business days from the date of the incident as required by [REDACTED] policies and procedures for student behavior interventions.
19. There is no evidence that behavior interventions, in response to the physical restraint on [REDACTED] [REDACTED] were addressed at the [REDACTED] IEP.
20. A previous incident of physical restraint involving an escort hold and "take down" was used with student on [REDACTED] and the restraint lasted 15 minutes. The incident involved the same reporting staff and reporting social worker.
21. The Maryland Department of Education is investigating the [REDACTED] incident involving the student.

#### Policies and Practices

22. [REDACTED] District of Columbia COA application did not have any conditions with regard to compliance with the State of Maryland's regulations.
23. [REDACTED] Policies for Student Behavior Interventions included in [REDACTED] District of Columbia COA application include the following relating to physical restraints:
  - a. "The [REDACTED] will only use physical restraint in an emergency situation and physical restraint is necessary to protect a student or other person from imminent serious, physical harm after less intrusive, non-physical interventions have failed or been determined inappropriate; or if the student's behavioral intervention plan or IEP describes specific behaviors and circumstances in which physical restraint may be used."
  - b. [REDACTED] staff will provide documentation each time a student is in a restraint."
  - c. "If restraint or seclusion is used for a student whose IEP or behavior intervention plan does not include the use of restraint or seclusion, an IEP meeting will be set up within ten business days of the incident in accordance with COMAR 13A.08.03."
  - d. "The [REDACTED] will monitor the use of restraint and seclusion and will investigate any complaints regarding restraint and seclusion."
24. [REDACTED] has two approaches on behavior management: Language Intervention Model and Physical Intervention Model.
25. The Physical Intervention Model is physical restraint and is used if the student is in "total disruption or crisis." [REDACTED] requires the use of the Physical Intervention Model as a "last resort."
26. In school year [REDACTED] used physical restraints that were a seated wall hold against the floor and allowed prone holds.



27. In school year [REDACTED] discontinued the use of prone holds and requires all restraints to be in the "face-up" position.
28. In school year [REDACTED], one student was sent to a hospital for medical attention because of a restraint. In school year [REDACTED], no student was sent to a hospital because of a restraint.
29. [REDACTED] has assured that they do not use aversive intervention and specifically indicates they do not use any of the specifically delineated aversive behavior management strategies as defined in the District of Columbia law.
30. Prior to the complaint at issue, no formal or informal complaints were filed with OSSE or DCPS against [REDACTED] during the [REDACTED] or [REDACTED] school years.
31. OSSE's investigation included questioning thirteen members of the school community concerning the implementation of aversive interventions at [REDACTED], including two students, five high school special education teachers, one school director, three middle/lower special education teachers, and two related service providers. All respondents reported that aversive interventions were not implemented at [REDACTED].
32. All [REDACTED] staff members receive Therapeutic Aggression Control Techniques behavior management training and are required to be certified annually. Training on physical restraints is provided at the beginning of the school year and periodically at staff development.
33. The Director of [REDACTED] is trained and certified by Therapeutic Aggression Control Techniques Training Institute and is the trainer for [REDACTED] staff.
34. Excluding the incidents with the student, in [REDACTED] there were ten other incidents of the use of physical restraints at [REDACTED] and in [REDACTED] there were eight other incidents of use. There was no finding by [REDACTED], DCPS, or other agency subsequent to the incident reports that any of these restraints constituted aversive intervention.
35. DCPS had no information or belief that [REDACTED] used aversive interventions with students at the time the student was placed at [REDACTED]. Until the filing of the complaint in [REDACTED] regarding the incident with the student, DCPS had no information regarding impermissible behavioral interventions with students.

### **Discussion/Conclusion**

**DCPS complied with Title 38, Chapter 25B, District of Columbia Code ("DC ST") § 38-2561.03 (b)(1) with regard to the placement of the student in [REDACTED] in the [REDACTED] school year.**

As a preliminary matter, it is important to note that the jurisdiction of the OSSE in this State Complaint system is limited to allegations of noncompliance under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §1400 et seq., 34 C.F.R. §300.151 et seq., and the District of Columbia's special education law and regulations. As such, allegations of violations of other State's laws and regulations are not within the OSSE's jurisdiction. As stated above, the sole issue in this State Complaint is: In the [REDACTED] school year, whether DCPS placed a student in a nonpublic school, [REDACTED], that allowed aversive intervention in its policy or practice. OSSE's assumption of this limited jurisdiction is not in any way intended to restrict or limit the rights of the student with regard to the incident cited in the complaint.

Title 38, Chapter 25B, DC ST §38-2561.03 (b)(1) provides: "Unless the placement of a student has been ordered by a District of Columbia court, federal court, or a hearing officer pursuant to IDEA, no student whose education, including special education or related services, is funded by the District of Columbia government shall be placed in a nonpublic special education school or program that: (A) Allows the use



*of aversive intervention in its policy or practice...*" (Emphasis added.) This prohibition against aversive intervention was added to the District of Columbia Statutes in 2008 by "Protection of Students with Disabilities Amendment Act of 2008" and was effective [REDACTED]. (See DC ST § 38-2561.01 - Historical and Statutory Notes.) In this case, the incident occurred after the effective date of the aversive intervention prohibition and it is uncontested that the student was placed by DCPS and the exceptions for placement described in DC ST § 38-2561.03(b)(1) do not apply.

Aversive intervention is defined as "... specific strategies for behavioral-treatment intervention, including:

- (A) Noxious, painful, intrusive stimuli or activities that result in pain;
- (B) Any form of noxious, painful, or intrusive spray or inhalant;
- (C) Electric shock or use of a graduated electronic decelerator;
- (D) Pinches and deep muscle squeezes;
- (E) Withholding adequate sleep, shelter, clothing, bedding, or bathroom facilities;
- (F) Withholding meals, essential nutrition, or hydration, or intentionally altering staple food or drink to make it distasteful; or
- (G) The use of chemical restraints, instead of positive programs or medical treatments."

This definition of aversive intervention is not exhaustive. It is the determination of OSSE that the physical restraint of a student could be an aversive intervention if it is a behavioral-treatment intervention practice that results in pain.

[REDACTED] Policies and Procedures for Student Behavior Interventions limit physical restraints to an emergency situation to protect a student or other person from harm after other less intrusive, non-physical interventions, strategies, and supports have failed or were determined to be inappropriate or if the behavior is in accordance with the student's behavior intervention plan or IEP. Physical restraint is considered an intervention of "last resort" when a student is in "total disruption or crisis."

All [REDACTED] staff receives Therapeutic Aggression Control Techniques behavior management training and are required to be certified annually. Training on physical restraints is provided at the beginning of the school year and periodically at staff development. The Director of [REDACTED] is trained and certified by Therapeutic Aggression Control Techniques Training Institute and is the training staff.

OSSE's adopts the findings of DCPS with regard to the [REDACTED] incident with the student:

1. With regard to the two arm hold:
  - a. [REDACTED] staff restrained the student prematurely prior to other options being exhausted, such as counseling or other non-physical interventions.
  - b. There is no evidence that student posed a risk of "imminent, serious, physical harm" to [REDACTED] or others at the time of the physical restraint."
  - c. The double arm bar was not proportionate, not the least intrusive, nor the last resort of controlling the student.
2. With regard to the protective hold of the student in a prone position:
  - a. "...past instances of hyperventilation should have cautioned staff that positioning the student against the floor was particularly dangerous and inappropriate."
  - b. "...the Student should have been placed in a seating position where any physical injury could have been more easily identified and where [REDACTED] airway would remain unobstructed until the situation calmed."



- d. Even if the protective hold was permissible, it was "improperly applied and dangerous to the student."

██████ did document the incident and report the incident to the student's parent. ██████ policy requires an IEP meeting to be held if restraint is used for a student when the student's IEP or behavior intervention plan does not include the use or restraint or seclusion. Although ██████ did have a subsequent IEP meeting for the student, the IEP Team did not address behavioral intervention strategies, including appropriate non-physical behavioral interventions or non-restrictive de-escalation strategies.

No formal or informal complaints have been filed against ██████ since ██████. Together with the incidents with the student, there were ten incidents of physical restraint in ██████ and, eight incidents in ██████. Although there was a need for medical treatment for one incident in ██████, there was no finding by ██████, DCPS, or other agency subsequent to the incident reports that any of these restraints constituted aversive intervention.

Notwithstanding the ██████ incident with the student, there is no evidence that DCPS had any information or belief that ██████ used aversive interventions with students as a matter of policy or practice at the time the student was placed at ██████. It was the filing of this instant complaint regarding the incident with the student and the subsequent investigation that notified DCPS of the use of an impermissible behavioral intervention with a student. Therefore, the DCPS complied with Title 38, Chapter 25B, DC ST § 38-2561.03 (b)(1) with regard to the placement of the student in ██████ in the ██████ school year.

#### Corrective Action

##### DCPS

Pursuant to the IDEA, 34 C.F.R. §300.146, a student placed in a nonpublic school by a public agency must be provided an education that meets the standards that apply to education provided by the State and local educational agency. In addition, the IDEA requires that even if a private school or facility implements a child's IEP, responsibility for compliance with IDEA Part B remains with the public agency. (34 C.F.R. §300.325(c)) Consistent with its responsibilities under Title 34 C.F.R. §§300.146 and 300.325(c), DCPS properly investigated the incident with the student upon being notified of this complaint and submitted the following voluntary corrective actions in its ██████ response that DCPS will implement with regard to ██████:

1. DCPS will require all placement specialists assigned to ██████ and who may place students at ██████ to discuss intervention strategies at placement meetings for all DCPS students. These meetings must include a discussion of the circumstances under which physical intervention is appropriate. The appropriate use of physical interventions, if any, shall be documented in the student's IEP.
2. DCPS will require ██████ to notify DCPS of each instance where physical intervention is used against a DCPS student within 45 hours of the intervention.
3. DCPS will consider withholding the placement of students at ██████ if other instances of student injury occur or if ██████ does not demonstrate progress in how force and seclusion are used.



4. DCPS will continue to cooperate with OSSE or any other agency in investigating any reports or allegations of mistreatment, excessive force, or other improper physical restraint used against students.

OSSE accepts these voluntary corrective actions. Additionally:

5. DCPS must promptly notify OSSE if it receives any additional information suggesting [REDACTED] staff may have engaged in inappropriate discipline or physical interventions with a District of Columbia student.

[REDACTED]

Notwithstanding the above conclusion, OSSE has a responsibility, within and beyond the State complaint procedures, to monitor the implementation of the Individuals with Disabilities Education Act and the District of Columbia laws and regulations with regard to improving educational results and functional outcomes for all children with disabilities and ensuring compliance with all local and federal statutes for the programs under its jurisdiction, including education of District children and youth with disabilities. In accordance with this responsibility, the District of Columbia enacted regulations regarding the approval of nonpublic schools serving students with disabilities funded by the District government.

The COA regulations state that a school or program shall operate in a manner that is consistent with the specifications recorded on the COA issued to the individual or entity with legal responsibility for governing and operating the school or program. (DCMR 5-3813.3(b)) Additionally, OSSE may deny, revoke, refuse to renew, or suspend a COA for the school's violation of any commitment made in the application for COA. (DCMR 5-3813.7(a)(3))

OSSE's investigation revealed that [REDACTED] staff did not follow its own policies, practices, and training on the use of physical restraints in the [REDACTED] incident with the student. The use of physical restraints with the student was not permissible and violated the commitment of [REDACTED] to only use restraint in an emergency situation to protect a student or other person from harm after these other less intrusive, non-physical interventions, strategies, and supports have failed or were determined to be inappropriate.


While OSSE finds that DCPS was not out of compliance with Title 38, Chapter 25B, DC ST § 38-2561.03 (b)(1), OSSE finds that [REDACTED] is out of compliance with DCMR 5-3813.3(b). In order to correct this noncompliance, [REDACTED] must:

1. Within 60 days of the date of this report, provide training in Therapeutic Aggression Control Techniques for the individual staff members involved in this incident. Training must be provided directly to the staff members, not through a trainer who has attended a "Training of the Trainers" course.
2. Within 40 days of the date of this report, disseminate a copy of [REDACTED] policies and procedures regarding restraints to all [REDACTED] staff members and require all staff members to sign an individual assurance that the [REDACTED] policy will be followed with all students.
3. For the next six months, provide copies of all incident reports involving District of Columbia students to OSSE within five business days of the incident.

Failure to provide documentation of the above corrective actions within the mandated timeline may result in OSSE's revocation of [REDACTED] COA in accordance with DCMR 5-3813.7(a)(3).

If you have any questions regarding this report, please contact Melanie Byrd, Director of Compliance & Monitoring at [melanie.byrd@dc.gov](mailto:melanie.byrd@dc.gov) or 202-741-0270.

Sincerely,

A handwritten signature in black ink, appearing to read "Tamera J. Lewis". The signature is fluid and cursive, with the first name "Tamera" being more prominent.

Tamera J. Lewis  
Assistant Superintendent of Special Education

Enclosure

cc: [REDACTED] Student  
[REDACTED] Complainant  
[REDACTED] Department of Education (redacted copy)

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