

IN THE MATTER OF
HICKORY ELEMENTARY SCHOOL/HARFORD COUNTY PUBLIC SCHOOLS
A REPORT BY
MARYLAND DISABILITY LAW CENTER

Leslie Seid Margolis
Managing Attorney
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I.

INTRODUCTION

In July, 2014, Maryland Disability Law Center received several calls raising concerns about the treatment of a group of students with disabilities at Hickory Elementary School in Harford County, Maryland. According to the callers, at the end of May, 2014, just before the school year ended, the parents of the ten students in one of the self-contained classes for students with autism and similar disabilities at Hickory received an anonymous letter alleging that the teacher and her assistants had treated the children “abusively.” (Attachment 1.) Specifically, the letter stated, among other allegations, that Teacher Doe¹ and her classroom assistants used a bottle to spray water in students’ faces, threatened them verbally and with a rolling pin, and chased them with strong-odor markers. Based on the number of children involved and the gravity of the allegations, MDLC determined that it had probable cause to investigate whether abuse had occurred, and undertook an investigation.

As part of its investigation, MDLC reviewed the individualized education programs (IEPs) and assessments of nine of the students for each of the years they had been in Teacher Doe’s classroom.² As a result of this record review, MDLC determined that in addition to investigating abuse, it had probable cause to investigate whether educational neglect had occurred, and

¹ The teacher will be identified in this report as Teacher Doe or Ms. Doe.

² MDLC obtained consent from nine parents to review their children’s records.

expanded the focus of its investigation. In addition to review of records, MDLC interviewed staff, reviewed Harford County Public Schools' investigation reports, and spoke with the parents of nine of the students in the teacher's classroom.

MDLC's investigation revealed a number of separate but related issues. First, Teacher Doe and several staff in her classroom appear to have engaged in abusive treatment of students. Ms. Doe's classroom was one in which several staff members, including Ms. Doe, used or condoned aversive behavior intervention techniques that caused her students discomfort or fear, according to MDLC's interviews. According to staff, water spray was used as a "motivator" for almost all the students and to deter challenging behavior for some. A rolling pin, ordinarily used by one student to roll out Play-Doh, was used to threaten him so that he would remain in his seat. Exclusion was used without proper documentation in violation of state regulations. Verbal interactions with students by at least one staff member were characterized by other staff members as sometimes "harsh" and "borderline abusive." One student was often separated from the rest of his classmates with padded mats or partitions used to isolate him from his classmates and staff.

Second, the students in the classroom were subjected to pervasive and longstanding educational neglect, as evidenced in part by what some staff characterized as a "chaotic" classroom, implementation of teaching sessions by untrained or minimally-trained support personnel with little or no oversight by Teacher Doe, resistance of, or refusal by, Teacher Doe to accept support, as reported by the behavior and educational specialists assigned to assist her in meeting the needs of the students in her class, failure to conduct behavioral assessments or to develop and implement behavior intervention plans for many students who needed them, failure to consider assistive technology in a meaningful way for the students in the class, and repeated

use of cut-and-paste IEPs developed without adherence to the legal requirements for individualized consideration of present levels of academic, functional and developmental performance, individualized goals and objectives, or individualized decisionmaking.

Third, MDLC's investigation also revealed a systemic breakdown in oversight and accountability at Hickory Elementary School's administrative level and at the Harford County Public Schools' central office level. Hickory's principal and assistant principal stated that they were unaware of the abusive classroom situation until three substitute support inclusion helpers assigned to the classroom each stepped forward in March, 2014 to report concerns. Although the assistant principal had a background as a special educator, she presided over years of IEP meetings during Teacher Doe's tenure at Hickory without substantive knowledge of how to assess the appropriateness of an IEP and, according to her, without knowing if it was her responsibility as IEP chair to understand whether or not an IEP is appropriate. The specialists who were assigned to support Teacher Doe occasionally raised some instructional and other concerns to their supervisor in the Office of Special Education, but those concerns were not resolved effectively.

Fourth, MDLC found that lack of training of staff at all levels contributed significantly to the breakdown. Some support staff had no virtually no training before being placed in the classroom; others had only one or two days of training in verbal behavior methodology and some training in crisis prevention and intervention. The behavior specialist assigned to support the verbal behavior programs lacked training in both behavior support and verbal behavior methodology. Hickory's assistant principal lacked current professional development in IEP development and other relevant aspects of special education, and the principal had no

background or current professional development in special education. The Office of Special Education autism program coordinator had no background in autism.

Fifth, after a thorough record review and engagement in IEP meetings for individual students in the fall of 2014, MDLC staff concluded that Teacher Doe's students had been adversely affected by the time they spent in her classroom. For example, several students' IEPs from the 2013-14 school year document regression in skills. Some students have moved backwards in their ability to communicate, or in their ability to manage their behavior. Several of the students have engaged in behavior or made verbal statements at home that appear to reflect the behavior they witnessed or to which they were subjected during their time in Teacher Doe's classroom. Additionally, because the IEPs were not reasonably calculated to enable them to make meaningful educational progress, often lacking goals and objectives in academic areas such as math problem solving, literacy, or written language, for example, Teacher Doe's students were denied to opportunity to move forward academically during the time they were in her class.

This report addresses MDLC's investigation and findings in detail. The final section of the report contains a number of recommendations designed both to provide redress to the students who were in Teacher Doe's class and to achieve systemic reform to minimize the chance that this type of situation will recur, and to ensure that staff who provide services to students with disabilities in Harford County are well-trained and well-supported to meet the needs of this vulnerable population.

It should be noted that Harford County Public Schools (HCPS) has worked cooperatively with MDLC since the initiation of this investigation, and that HCPS has made administrative and programmatic changes prior to receiving this report. HCPS has also made a commitment to provide compensatory services to the students who were in Ms. Doe's class. It is MDLC's hope

that HCPS will view the recommendations in this report as a framework for further systemic improvements and that HCPS and MDLC can continue to work together to ensure that these recommendations are implemented.

II.

MARYLAND DISABILITY LAW CENTER AND PROTECTION AND ADVOCACY SYSTEM AUTHORITY

MDLC is the designated Protection and Advocacy system (P&A) for Maryland.³ In accord with three federal statutes, the P&As have extensive authority to protect people with disabilities and to ensure effective investigations of abuse and neglect incidents.⁴ These statutes empower the P&As to engage in a variety of investigative and advocacy activities including, but not limited, to the authority to: monitor providers to ensure safety and prevent rights violations; enter facilities to investigate abuse, neglect, or death incidents and interview victims, witnesses, employees, or other persons who might have knowledge of the alleged abuse, neglect or death; access the records of individuals with disabilities with the consent of the individual or his or her legal representative, or to access records of people with disabilities without such consent when there is probable cause of abuse or neglect and certain other conditions are met; and pursue administrative, legal, and other appropriate remedies or approaches to ensure the protection of rights of eligible persons with disabilities.

Probable cause means “a reasonable ground for belief that an individual with developmental disabilities has been, or may be subject to abuse or neglect. The individual making such

³ See COMAR 01.01.1986.12 for Executive Order appointing MDLC as the protection and advocacy system for Maryland.

⁴ See Developmental Disabilities Assistance and Bill of Rights (DD) Act of 2000, 42 U.S.C. §15043; Protection and Advocacy for Individuals with Mental Illness (PAIMI) Act of 1986, as amended, 42 U.S.C. §10801 *et seq.*, and Protection and Advocacy for Individual Rights (PAIR) Program of the Rehabilitation Act of 1973, as amended, 29 U.S.C. §794(e), (f) (incorporating the general authorities, including access authorities as set forth in the DD Act.

determination may base the decision on reasonable inferences drawn from his or her experience or training regarding similar incidents, conditions or problems that are usually associated with abuse or neglect.” 45 C.F.R. §1386.19. The Protection and Advocacy agency is the final arbiter of the determination of probable cause. *See, e.g., Maryland Disability Law Center v. Mt. Washington Pediatric Hospital*, 664 A.2d 16, 24 (Md. App. 1995).

Under the DD Act regulations, abuse means

any act or failure to act which was performed, or which was failed to be performed, knowingly, recklessly, or intentionally, and which caused, or may have caused, injury or death to an individual with developmental disabilities, and includes such acts as: Verbal, nonverbal, mental and emotional harassment; rape or sexual assault; striking; the use of excessive force when placing such an individual in bodily restraints; the use of bodily or chemical restraints which is likely to cause immediate physical or psychological harm or result in long term harm if such practices continue.

45 C.F.R. §1386.19.

Under the DD Act, neglect is defined as follows:

Neglect means a negligent act or omission by an individual responsible for providing treatment or habilitation services which caused or may have caused injury or death to an individual with developmental disabilities or which placed an individual with developmental disabilities at risk of injury or death, and includes acts or omissions such as failure to: establish or carry out an appropriate individual program plan or treatment plan (including a discharge plan); provide adequate nutrition, clothing, or healthcare to an individual with developmental disabilities; provide a safe environment which also includes failure to maintain adequate numbers of trained staff.

45 C.F.R. §1386.19.

III.

MDLC'S INVESTIGATION PROCESS

MDLC commenced its investigation with a letter to Ms. Barbara Canavan, Superintendent of Harford County Public Schools (HCPS), on July 23, 2014. Patrick Spicer, counsel for HCPS responded immediately and promptly provided all requested documents. MDLC spoke with the parents of all ten of the students who were in Teacher Doe's class, subsequently obtaining authorization to request records for nine students and conversing with their parents on multiple occasions.⁵ MDLC also interviewed a number of HCPS staff and subsequently made a second formal document request to HCPS, receiving the documents within days of the request. HCPS provided additional documents on its own and cooperated fully with all aspects of MDLC's investigation.

MDLC took as its starting point the allegations contained in the May 29, 2014 anonymous letter received by the parents. However, a number of parents raised a concern with MDLC about the inability to see into the classroom because of window and door coverings, coupled with their feeling that they were not welcome in the classroom and that there would be a several minute delay before the classroom door would open if they went to pick up their child from school. Subsequent conversations with parents and review of student records raised additional concerns regarding the use of exclusion and the use of furniture to block students into place, as well as of educational neglect. These issues were included within the scope of MDLC's investigation.

⁵ Pursuant to its access authority, MDLC contacted the families of the students in the class to inform them of its investigation. As noted above, the parents of nine students authorized MDLC to review their children's records. Based on MDLC's concerns after the record review, the parents of these nine students retained MDLC to represent their children at upcoming specially-scheduled IEP review meetings in September and October, 2014. This report's general findings and its recommendations apply to all of the students in Teacher Doe's classroom.

IV

MDLC'S INVESTIGATION

V.

SUMMARY OF FINDINGS²⁵

Water Spray:

MDLC's investigation confirmed that water spray was used as a deterrent with Student 8 on multiple occasions. Sometimes he was actually sprayed with water; other times, staff members showed the spray bottle to him to get him to stop his behavior. Nearly all the staff interviewed by HCPS and MDLC confirmed that they had used or had witnessed the use of water spray with Student 8. MDLC confirmed that in March, 2014, water spray was witnessed being used as a deterrent with Student 9 and that water spray was used with Student 3, who was sleeping at the time. At least four staff people in Teacher Doe's classroom used water spray as a deterrent with students.

MDLC's record review revealed that a "water spray bottle" was included on Student 4's March, 2013 functional behavioral assessment as a previous intervention on a list developed by Teacher Doe. Additionally, Student 4's December, 2011 psychological report states that he "frequently is also noted to get hot and require 'cooling down' using a spray bottle of water," despite his parent's recent confirmation at an IEP meeting that Student 4 has no such tendency or health condition requiring "cooling down" with water spray.

MDLC's interviews revealed that water spray was also used, reportedly as a motivator, for Student 1, Student 2, Student 3, Student 4, Student 5 and Student 7. No parents who were interviewed by MDLC for whom MDLC reviewed records were ever contacted or asked to give

²⁵ The specific findings in this section pertain to the nine students whose parents authorized MDLC to review records for their children. The recommendations that follow apply to all the students who were placed with Ms. Doe during her time at Hickory Elementary School.

permission for the use of water spray as an “incentive” or “motivator”, other than the parent of Student 8.

Rolling Pin

MDLC’s investigation confirmed that a rolling pin was used as a deterrent with Student 4 and, according to one staff member interviewed by MDLC, with Student 6. Staff would bang the rolling pin on students’ desks or shake it at them. At least three staff members in Ms. Doe’s classroom used the rolling pin.

Markers

MDLC’s investigation confirmed that markers were used as a deterrent or punishment with Student 6 and were likely used with Student 4. Several staff told MDLC that one of the inclusion helpers would threaten to draw a mustache on Student 6; another inclusion helper told MDLC that the inclusion helper “used to draw a mustache” on Student 6. MDLC was not able to confirm from the staff interviews that markers were used with Student 4; staff told MDLC they did not see Ms. Doe or other staff use markers with Student 4, and several staff told MDLC that Student 4 and Student 6 would hold markers up to their noses. However, given the parent’s report to MDLC and to HCPS of Student 4’s behavior upon returning from school and his aversion to the marks on his face, and given that many staff told MDLC that they could not always see what was happening in other parts of the classroom because of the way furniture was arranged, MDLC finds that it is likely that markers were used aversively with Student 4. After meeting with Student 4’s parents in the fall of 2014, HCPS did report the marker allegations to Child Protective Services, which declined to investigate.

Exclusion/Isolation

MDLC's investigation confirmed the use of exclusion or what some staff characterized as "isolation" with students in Teacher Doe's class. In addition to the interviews with multiple staff who reported the use of partitions with Student 4, and with a staff person who also reported the use of "isolation" with Students 1 and 6, Ms. McKee stated in her MDLC interview that exclusion with portables was used. She told MDLC that she had printed out the COMAR regulations regarding time out (exclusion) for staff but that she never saw staff documenting time in or out of exclusion. Other staff interviewed by MDLC also confirmed the use of "isolation" or exclusion in the back of the room with the use of partitions for a majority of the students; staff also told MDLC that these periods of exclusion were not documented. An inclusion helper told MDLC that Student 3 would take her dolls and go to the "isolation area" to play. Another inclusion helper told MDLC that if students were "completely not listening" they would be put in the back of the room with the partitions, which were soundproof and had magnets to close them. The inclusion helper told MDLC that this occurred with "a majority of the students" and that a timer would be set for one to four minutes." The inclusion helper told MDLC that "nobody" documented these periods of exclusion or isolation.

Use of Furniture to Block Students²⁶

MDLC confirmed the practice of using furniture to block or pen students in place. In addition to the HCPS investigation statement by a substitute inclusion helper who witnessed Student 8 pinned into place after he threw a water bottle, MDLC's conclusion is based on its investigation interviews and conversations with the parent of Student 5, who on several occasions told MDLC

²⁶ During MDLC's interviews with staff and conversations with parents, numerous comments were made regarding the fact that the classroom desks were heavy but easy to flip and that some students engaged in a good deal of desk-flipping behavior. Because of the safety hazard this poses, MDLC has addressed this issue in its Conclusion and Recommendations.

that staff told her during the 2013-14 school year that they were using furniture to keep Student 5 from sliding out of her seat. Staff would use furniture, partitions and their own positioning to keep Student 5 in a restricted space so she could not leave the area.

If used in such a way that Student 8 or Student 5 could not get up and move around or leave the area, the furniture and staff effectively placed them in seclusion, in violation of COMAR regulations governing the use of restraint and seclusion. However the furniture was used, the students should have had functional behavioral assessments and behavior intervention plans if their inability to sit interfered to such an extent with their instruction that staff felt a need to pen them in to a confined space.²⁷ Neither Student 8 nor Student 5 had a functional behavioral assessment or a behavioral intervention plan until after corrective action was initiated in this matter and IEP meetings were convened in September, 2014.

Window and door coverings/isolation of classroom

MDLC heard from a number of the parents of the students in Teacher Doe's class that it was not possible to see into the classroom because the windows and doors were covered. Some parents said the windows were opaque; others said they were covered with paper. Staff who were interviewed uniformly stated that the windows were not covered. Nearly everyone who was interviewed, however, agreed that the window in the main door to the classroom was covered. MDLC was unable to substantiate the allegation that it was not possible to see into the classroom at all.

It is clear, however, from multiple conversations with the parents of Teacher Doe's students, that most parents did not feel welcome in the classroom and that its isolation from the main

²⁷ Ms. McKee noted in her MDLC interview that she did not recommend a functional behavioral assessment for Student 5 because she thought Ms. Dekowski's interventions were sufficient. She said she could have recommended a functional behavioral assessment but didn't "know what good an FBA would have done when I was so unwelcome in the classroom."

building created a setting where, without administrative oversight or parental involvement, Ms. Doe headed a classroom that was not properly supported by or accountable to the school administration or to HCPS. This year, the classroom is visible through all the windows, and Dr. Austin has made clear, as has Hickory's new principal, and the new teachers, that parents are welcome to visit their children's classrooms any time.

Verbal abuse

There is evidence from MDLC's interviews to support a finding that a staff member told Student 6 that she had stinkbugs and would throw them on him. Additionally, MDLC's investigation confirmed that although this staff member could be kind to the students in the class, there were also times when her tone of voice was "harsh" and one instance when she was overheard saying, in front of Student 8: "He's getting on my nerves." In her MDLC interview, an inclusion helper noted that another staff member also spoke harshly to students at times. According to HCPS' investigation and MDLC's interviews, the staff in the office next door reportedly believed that the climate in the classroom bordered on verbally abusive at times, but it does not appear that they made specific complaints or reports to the administration at the school or to the Office of Special Education, and MDLC's interviews did not uncover specific allegations other than what is noted above. MDLC finds sufficient evidence to support a finding that at least one staff person sometimes spoke to students inappropriately and in a harsh tone of voice, but does not find sufficient evidence to support a finding of sustained verbal abuse as alleged in the anonymous letter.

Educational neglect

MDLC's investigation makes clear that from the beginning, the verbal behavior program at Hickory Elementary School did not receive necessary resources and support. Shortly before the

program was to begin in the 2010-11 school year, the coordinator quit and Megan Dekowski stepped in as her replacement, although she had no formal training in verbal behavior methodology and did not receive formal training until January of 2014. Teacher Doe was a new teacher with little experience when she was hired to teach in the verbal behavior classroom. Ms. Jennings had opposed the location of the verbal behavior program at Hickory because she did not believe the autism program already in her school had enough support. Nor was she provided with the additional support she desired from HCPS for the verbal behavior program. In her HCPS interview, Ms. Jennings discussed ongoing concerns with managing student behavior. However, as noted elsewhere in this report, the IEP team rarely requested functional behavioral assessments for students and there is no evidence in the student records that the team regularly reviewed and revised the assessments it did conduct.

It is clear from the April 23rd memorandum from Kathy Bailey to Superintendent Canavan that the quality of education for the students in Teacher Doe's class had been seriously compromised and that their IEPs had not been effectively implemented. The memorandum notes that "instructional outcomes for students did not align with IEP goals and objectives" and that "staff did not know what to do with the students" because "[m]aterials of instruction did not align with student outcomes or IEP goals and objectives." The fact that two thirds of the way through the school year a new classroom management system had to be put into place, a new data collection system had to be put in place, and a new schedule with more structure had to be developed also speak to what was missing in the classroom. The situation was prolonged by the reported inability of Ms. McKee and Ms. Dekowski to provide substantial assistance to Ms. Doe because of her alleged resistance and the response of their supervisor and of Hickory's assistant principal, who failed to timely intervene. Ms. Walter, the assistant principal, apparently not

understanding the gravity of the situation, told MDLC during her interview that “We all work with people we don’t get along with but we have to be professional.” Ms. Walter said she needed Ms. McKee and Ms. Dekowski in that room and it “was their responsibility.” As Ms. Dekowski noted in her MDLC interview, however: “It’s hard to provide support to a teacher who doesn’t want it.” The autism program coordinator, Ms. Bailey, told MDLC that she had no concerns about Ms. Doe until March, 2014 when she says Ms. Dekowski contacted her and they set up a meeting to discuss teaching strategies. This meeting did not occur because of the intervening reports of the water spray use and the removal of Teacher Doe from the classroom.

Additionally, the IEPs of the students in Teacher Doe’s class failed to meet the legal requirements of federal and state law. Instead of accurately reflecting the performance and needs of students and thus giving rise to their IEP goals and objectives, present levels of performance often made no sense and were often not related to the goals and objectives for the students; it was not possible to know anything about the students from reading the present levels section of their IEPs. Decisions did not appear to be based on meaningful data and were not supported by documentation, as required by the federal and state prior written notice requirements. Nor did IEPs meet all area of student need.

Many of the nine students for whom MDLC obtained records had IEPs that noted disruptive or aggressive behavior without any discussion of what the behavior was; only two students had functional behavior assessments or behavior intervention plans. Several students had crisis intervention with the use of restraint on their IEPs although they had not had functional behavioral assessments and there was no evidence that crisis intervention was needed.

Although all of these students have significant speech and language disabilities and limited ability to express themselves verbally, the picture exchange communication system (PECS) was

used with all students without any clear evidence that this was the appropriate means of communication for each student. Only three students appear to have had assistive technology assessments, with AT devices recommended for none of them. One student is currently using a low-tech device; another student has a family-owned high tech device, but according to the parent, “[Teacher Doe] said it wasn’t helpful at school and didn’t use it.” Although HCPS told the parents of the students in Ms. Doe’s class that it planned, through a grant, to put iPads in their children’s classes for the 2014-15 school year for communication purposes and finally did so in November, 2014, this is still a one-size- fits-all response, and fails to take into account the possible need of these students for individual devices, customized to their individual needs, as required by the Individuals with Disabilities Education Act (IDEA).²⁸

Review of each student’s IEPs and assessments revealed a pattern of lack of individualization from year to year and from student to student. Each student received occupational therapy and speech and language therapy as a related service; each student received the same amount of service each year he or she was in Ms. Doe’s class, and each student received the same amount of service as each other student. Sections of each student’s IEP were simply copied from year to year, including typographical errors, and some sections were copied from one student’s IEP to another, including the typographical errors. The differences in IEPs seem arbitrary, as the IEPs do not contain expected information. For example, although “significant interfering behavior” is identified as a criterion for extended school year eligibility for many of the students, all of whom have been found eligible for ESY each year they were in Teacher Doe’s class, none of the behaviors are identified in the present levels section of the students’ IEPs, nor are they addressed in goals and objectives on the IEP. Further, the behavior plans of the two students who had

²⁸ The IDEA requires consideration of assistive technology for each student. 34. C.F.R. 300.324.