

Notice of Findings
March 30, 2023

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Local Educational Agency (LEA): Round Rock ISD
Co-Dist: 246-909
FY: 2022-2023
Complaint: 202321484

To the Individuals Addressed:

This notice is the written decision of the Texas Education Agency (TEA) regarding the third-party complaint filed on behalf of a student in the Round Rock Independent School District (ISD), herein referred to as the local educational agency (LEA). For the purposes of confidentiality, student gender pronouns are made neutral.

Allegations, Conclusions, and Reasons for TEA's Decision

As set out in 19 TAC §89.1195, the instant complaint was accepted by TEA pursuant to its general supervisory authority under 34 CFR §300.149 and 34 CFR §300.600. TEA investigated the following alleged violations of federal and state special education laws and the implementing regulations pertaining to the Individuals with Disabilities Education Act (IDEA), Texas Education Code (TEC), and/or the Texas Administrative Code (TAC).

Did the LEA ensure that all requirements at 19 TAC §89.1053 were met regarding the student on April 29, 2022, and did the LEA ensure that aversive techniques were not utilized regarding the student on the same date in accordance with TEC §37.0023?

TEA determined the following noncompliance and required corrective actions of the LEA.

The LEA does not always ensure that it meets requirements at 19 TAC §89.1053 and TEC §37.0023.

If the public education agency against which a complaint is received under subsection (h) of this section believes that TEA made an incorrect determination of noncompliance, the public education agency may submit a written request for reconsideration to the TEA within 15 calendar days of the date that TEA issued its findings. The reconsideration request must identify the asserted error and include any documentation to support the claim. The TEA will consider the reconsideration request and provide a written response to the public education agency within 45 calendar days of receipt of the request. The filing of a reconsideration request must not delay a public education agency's implementation of any corrective actions required by the TEA.

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This concludes TEA's investigation. Please direct questions regarding this notice to me at keith.swink@tea.texas.gov.

Respectfully,

Keith Swink

Keith Swink
Texas Education Agency

enclosure: satisfaction survey

The specific allegation and TEA's findings of fact and conclusions, together with the reasons for TEA's final decision, are as follows.

Allegation

Did the LEA ensure that all requirements at 19 TAC §89.1053 were met regarding the student on April 29, 2022, and did the LEA ensure that aversive techniques were not utilized regarding the student on the same date in accordance with TEC §37.0023?

Statement of the Complaint for the Allegation

In the February 14, 2023 letter of complaint, the complainant alleges that the student was inappropriately restrained on April 29, 2022, and that the restraint was not reported as required. The complainant also alleges that aversive techniques were utilized as well.

Findings of Fact for the Allegation

1. Videos of the April 29, 2022 incident were provided for this investigation.
 - a. In one of the videos, two staff members (Ms. Manzi and Ms. York) are speaking with the student in the hallway, and the student attempts to run away from them. The two staff members conduct a two-person standing restraint and walk the student down the hallway. The video footage shows the student attempting to resist staffs' forward momentum down the hallway using his/her feet.
 - b. In one of the videos, the student is observed standing in a side area off the main hallway with two staff members (Ms. Manzi and Ms. York) standing at the entry/exit speaking with the student. A third staff member (Mr. Thomas) relieves one staff member (Ms. Manzi), and the student leaves the area when she walks away. One staff member (Mr. Thomas) grabs the student in the hallway with one arm around his/her neck and throws the student back into the side room against the wall. The student lands on the floor, touches the back of his/her head with one hand, and stands to face the staff member (Mr. Thomas) with a closed fist in a threatening manner while yelling that s/he had been thrown into the wall. Three staff members (Ms. Manzi, Ms. York, Mr. Thomas) walk into the side room with the student and are shown using their arms to block the student's physical and verbal threats to punch them. Staff are shown walking toward the student rather than away from the student. Two staff members (Ms. York and Mr. Thomas) take hold of the student's left arm. The student then directs his/her anger toward one individual staff member (Mr. Thomas) and steps toward him while yelling at him not to push him/her into the wall.
 - c. Two staff members (Ms. York and Mr. Thomas) place the student on the ground and hold him/her there. The student is followed to the ground. However, the student's body is outside the camera's view, and the viewer cannot see if all of the student's limbs were restrained. The student is held on the ground by the two staff members on each side of the student for approximately five minutes before being released. The student and staff are heard speaking to one another throughout most of the restraint.
2. Regarding the incident noted above in Finding of Fact 1(a), video of the incident shows the following type of hold that was used.



3. Regarding the incident noted above in Finding of Fact 1(a), Ms. York writes the following in part.

[The student] was arguing and refusing to take a break while in Ms. Manzi's room. After s/he was redirected again, s/he walked to cool down then turned around and tried to get back to Ms. Manzi's room, pushing into myself and Ms. Manzi when we blocked the hallway. S/He moved closer and postured towards Ms. Manzi as if s/he was going to hit her, so we escorted him/her to cool down.

4. No restraint documentation was generated for the incident noted above in Finding of Fact 1(a). Regarding this incident, the LEA writes the following (emphasis in original).

I *think* what you are referring to is the guided transport by Manzi and York at the end of the recording entitled "Goals_812_West_Entrance_April_29_20220510...." In which the individuals are on either side of the student and are holding onto him/her, but s/he is walking on his/her own. It is the District's position that this did not meet the definition of a "restraint" as defined by the Texas Administrative Code. Physical force was not being used to significantly restrict the free movement of all or a portion of the student's body. Rather, s/he was being escorted and allowed him/herself to be escorted with trained individuals using a protective two person hold-escort.

5. The LEA staff members involved in the April 29, 2022 incidents were current in restraint training at the time.
6. The statement from the director of special education behavioral services who viewed the videos reads in part below regarding the incident noted in Finding of Fact 1(c).

At that point, both Ms. York and Mr. Thomas moved to start what looks like a CPI team control but they are kneeling to the floor with [the student] (not an approved restraint). Ms. Manzi is seen briefly leaning over them and her hands are engaged in some way as well (unseen). She then moves back into the opening of the cooldown area and thereafter is leaning against the wall of cooldown. Ms. York and Mr. Thomas are engaged in the restraint. . . . Throughout the restraint on the floor, Ms. York maintains her position holding part of [the student's] body and does

not talk. Ms. Manzi stands near the wall in cooldown and doesn't say anything. Mr. Thomas gives verbal directions and seems to be (not visible) holding the other side of [the student's] body. [The student] continues yelling and begins crying.

7. The record includes a restraint documentation form for the restraint occurring in the cool-down room. The form shows the restraint was a "CPI Control Position" and that it lasted for approximately five minutes.
8. In its response to the complaint, the LEA confirms, regarding the incident noted in Finding of Fact 1(c), that it was a "restraint that was not in compliance with state law or regulation."
9. The incident noted in Finding of Fact 1(b) was reported to the State Board of Educator Certification and to the Texas Department of Family and Protective Services.

Conclusions and Reasons for TEA's Final Decision for the Allegation

19 TAC §89.1053 reads in part below.

Definitions. (1) Emergency means a situation in which a student's behavior poses a threat of: (A) imminent, serious physical harm to the student or others; or (B) imminent, serious property destruction. (2) Restraint means the use of physical force or a mechanical device to significantly restrict the free movement of all or a portion of the student's body. . . . A school employee, volunteer, or independent contractor may use restraint only in an emergency. . . . In a case in which restraint is used, school employees, volunteers, or independent contractors must implement the following documentation requirements. . . . The provisions adopted under this section do not apply to the use of physical force or a mechanical device that does not significantly restrict the free movement of all or a portion of the student's body. Restraint that involves significant restriction as referenced in subsection (b)(2) of this section does not include: (1) physical contact or appropriately prescribed adaptive equipment to promote normative body positioning and/or physical functioning; (2) limited physical contact with a student to promote safety (e.g., holding a student's hand), prevent a potentially harmful action (e.g., running into the street), teach a skill, redirect attention, provide guidance to a location, or provide comfort). . . . Physical force or threat of physical force must not be used to place a student in time-out.

TEC §37.0023 explains that "aversive technique" means a technique or intervention that is intended to reduce the likelihood of a behavior reoccurring by intentionally inflicting on a student significant physical or emotional discomfort or pain. The term includes a technique or intervention that . . . employs a device, material, or object that simultaneously immobilizes all four extremities, including any procedure that results in such immobilization known as prone or supine floor restraint.

Regarding the incident noted above in Finding of Fact 1(a), the transport hold used is a restraint in that it significantly restricts the free movement of the student's upper body and in that it significantly restricts the student's overall free movement (i.e., the student could not move to a location of his/her own choosing on his/her own volition while being transported), and the LEA did not ensure that the restraint was documented and reported as such. Additionally, physical force cannot be used to place a student in time-out, which was done in this case.

TEA clarifies further that although limited physical contact with a student to promote safety (e.g. holding a student's hand) or providing guidance to a location would not be considered a restraint under rule, the student's free movement was significantly restricted in this case.

Regarding the incident noted above in Finding of Fact 1(b) and (c), the video shows that the student was subjected to aversive techniques when s/he was thrown into a room by a staff member and when s/he was held on the ground by the two LEA staff members.

The allegation is substantiated.

Identified Noncompliance

Based on the evidence and current state and federal requirements, TEA finds the following noncompliance.

The LEA does not always ensure that it meets requirements at 19 TAC §89.1053 and TEC §37.0023.

Required Corrective Actions

In accordance with its general supervisory authority, TEA requires the following corrective actions of the LEA to address the noncompliance set out above.

For the student subject to this complaint:

The LEA must create a restraint report as required by 19 TAC §89.1053 regarding the incident noted above in Finding of Fact 4(a), must provide a copy of the report to the student's parent, must include a copy of the report in the student's special education eligibility folder, and must report the restraint to TEA as required by 19 TAC §89.1053(k).

For all students with disabilities in the LEA:

The LEA shall review its policies and related guidelines pertaining to the noncompliance cited in this report to determine if revision is necessary to prevent the noncompliance from reoccurring. If the LEA revises its policies and related guidelines, the LEA must provide written notice of revised policies/guidelines to LEA staff affected by the revisions.

The LEA must provide focused technical assistance to all special education and to all campus administrative personnel in the LEA to address the noncompliance cited in this report.

- The training must address the need to document and report restraints such as those used in the incident noted above in Finding of Fact 4(a).
- The training must address the prohibition of the use of aversive techniques as set out in TEC §37.0023.
- The training must address the prohibition of the use of physical force to place a student in time-out as required by 19 TAC §89.1053.

The LEA must also provide a copy of this investigative report, in full, to the conservator within five calendar days of the receipt of this report.

Required submission:

By **May 1, 2023**, the LEA must provide TEA with a proposed timeline for completing the corrective actions or must provide TEA with the following documentation demonstrating completion of the corrective actions.

- A copy of the restraint report and documentation showing that it was provided to the student's parent.
- A copy of any revised portions of special education policies and related guidelines.
- A copy of any relevant memoranda and/or guidance letters issued to staff.
- A copy of the training agenda describing the information presented in the staff development and a listing of the individuals, indicating their positions, who participated in the staff development.
- Documentation showing when and how the LEA provided a copy of the complete investigative report to the conservator.

In accordance with 34 CFR §300.600(e), TEA must ensure that the LEA corrects identified noncompliance "as soon as possible, and in no case later than one year after the State's identification of the noncompliance."

This concludes TEA's investigation of the complaint.