



**Investigation Report**  
**TRI-COUNTY SCHOOLS**  
**Easthampton, Massachusetts**

# **DISABILITY LAW CENTER INVESTIGATION REPORT**

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Tri-County Schools, Easthampton, Massachusetts

August 2, 2018

## **I. Introduction**

The Disability Law Center (“DLC”) is a private, non-profit organization mandated by Congress and designated by the Governor of Massachusetts as the protection and advocacy (“P&A”) system of Massachusetts. The federal P&A statutes specifically authorize P&A agencies, such as DLC, to investigate incidents of abuse or neglect of individuals with disabilities when the agency receives a complaint or determines that there is probable cause – that is, reasonable grounds to believe that individuals have been, or may be subject to abuse or neglect.<sup>1</sup>

In late March and early April 2018, DLC received three complaints to the system<sup>2</sup> regarding the treatment of children with disabilities enrolled in Tri-County Schools (“TCS”) in Easthampton, Massachusetts. TCS is a private, state-approved therapeutic special education K-12 day school in Easthampton, Massachusetts run by a non-profit, Northeast Center for Youth & Families (“NCYF”). TCS has the capacity to serve up to 115 special education students. The school primarily serves students who struggle with social, emotional and behavioral manifestations of their disabilities.

DLC interviewed the three initial complainants, two additional complainants, and viewed TCS restraint surveillance video obtained through the complainants. On April 25, 2018, DLC determined there was probable cause that students with disabilities have been, or may be, subject to abuse and neglect at TCS.<sup>3</sup> As a result of the complaints and the probable cause finding, DLC exercised its P&A authority to conduct a full investigation into abuse and neglect at TCS.<sup>4</sup> On May 3, 2018, DLC sent TCS Program Director Meredith Lagoy notice of our intent to investigate. After a comprehensive investigation, DLC found students with disabilities at TCS were subjected to abuse, neglect and improper practices.

TCS cooperated completely with our investigation. Additionally, TCS acknowledges systemic problems exist and agrees corrective measures are necessary to prevent further harm to students with disabilities. As a result, in June 2018, TCS decided to close for at least a year in order to reassess and reopen the school’s operation with a focus on a trauma-informed care model.

## **II. Background**

DLC begin its investigation with a site visit to TCS on May 31, 2018. This included an interview with NCYF Executive Director Paul Rilla and TCS’ Program Director Meredith Lagoy, in the presence of TCS’ counsel. During the visit, DLC also conducted an extensive tour of the building, including classrooms and time-out areas. During the

visit, TCS informed DLC of its closure plans. TCS also informed DLC that the Massachusetts Department of Elementary and Secondary Education (“DESE”) has “significant concerns” about the school’s operation and TCS is engaging in corrective action planning with DESE.

As part of this investigation, DLC also interviewed 19 parents of special education students enrolled in TCS during the 2017-2018 school year. DLC also reviewed student records for three students (with parental consent). Additionally, DLC reviewed Easthampton Police Department call log, arrest log, as well as all police reports related to student arrests at TCS from September 2017 until early May 2018. DLC also reviewed all Department of Children and Families (“DCF”) reports of abuse and neglect at TCS for the same time period. In addition, DLC sought records from DESE. Although, DLC never received DESE’s records, DLC has more than sufficient information to make a finding of abuse and neglect against TCS. Prior to the public release of this report, TCS had the opportunity to review and discuss its contents with DLC.

### **III. Legal Authority**

DLC, as the designated Protection and Advocacy System for Massachusetts, is authorized under the PAIDD statute “to investigate incidents of abuse and neglect of individuals with developmental disabilities if the incidents are reported . . . or if there is probable cause to believe that the incidents occurred.” 42 USC § 15043(a)(2)(b). Similarly, DLC is equivalently authorized under the PAIMI statute for individuals with mental illness. 42 U.S.C. § 10805(a)(1)(A).<sup>5</sup> As noted above, this investigation was commenced based upon multiple “complaints to the system” and a probable cause finding. Although a complaint to the system and a finding of probable cause constitute independent alternative bases for commencement of an investigation, in order to seek and secure various records in the P&A investigation, DLC made a finding of probable cause.<sup>6</sup> P&A systems are the “final arbitrators” of a probable cause determination and P&A access cannot be denied because the subject of the investigation disagrees with the finding.<sup>7</sup>

The P&A’s investigation access extends to non-residential schools serving students with disabilities. See *Connecticut Office of Protection & Advocacy v. Hartford Bd. Of Education*, 464 F.3d 229, 238-43 (2<sup>nd</sup> Cir. 2006).

The PADD and PAMII regulations define the terms “neglect” and “abuse” in almost the identical language. The PADD regulations define “abuse” as:

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 but is not limited to 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 not in compliance with Federal and State laws and regulations, or any other practice which is likely to cause immediate physical or psychological harm or result in long term harm if such practices continue.

45 C.F.R. § 1326.19. (The equivalent definition of “abuse” in the PAIMI regulations is found at 42 C.F.R. § 51.2).

The PADD regulations define “neglect” as:

a negligent act or omission by an individual responsible for providing services, supports or other assistance which caused or may have caused injury or death to an individual with a developmental disability(ies) or which placed an individual with developmental disability(ies) 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 health care to an individual with developmental disabilities; or provide a safe environment which also includes failure to maintain adequate numbers of trained staff or failure to take appropriate steps to prevent self–abuse, harassment, or assault by a peer.

45 C.F.R. § 1326.19. (The equivalent definition of “neglect” under PAIMI is found at 42 C.F.R. § 51.2).

## **IV. Factual Findings**

### **A. Abuse Findings**

#### **1. TCS staff repeatedly utilized excessive force and ignored student distress during restraints, used restraints as a non-emergency intervention, and intentionally antagonized students into restraints, resulting in physical and psychological injury to students with disabilities.**

##### **a. TCS staff utilized excessive force and unsafe restraint techniques, which resulted in increased physical injury to students with disabilities.<sup>8</sup>**

- One 14-year-old student, whose record DLC reviewed, was restrained seven times in a seven week period. He was injured in four of the seven restraints (accidentally kneed on the left side of his face by a staff member on one occasion and a variety of cuts and abrasions on his side, arms and face during the other restraints).
- DCF supported two probable cause findings of neglect against two separate TCS staff members during the 2017-2018 school year – one staff member pushed a student in the chest and grabbed him by the back of the neck and

the other staff member placed a child in a headlock. TCS immediately terminated both staff members.

- A parent reported her 8-year-old son's finger was broken during a behavioral incident in June 2018. She, like several parents we interviewed, noted that he was restrained almost daily and "came home with bruises on his arms and back almost every day due to holds" which could include up to 7 staff members.
- A parent of an 11-year-old student reported that his son was restrained daily as well and often came up with scrapes down his side, lower back and with bruising in the shape of finger prints on his shoulders.
- The parent of a high-school-aged student indicated that his son was slammed into an HVAC unit outside the school and injured, and a second high school parent reported his son came home with a black eye from a restraint. TCS senior administrators reported that they were not made aware of the HVAC incident.
- A former 19-year-old student, who attended TCS for multiple years, but was never restrained himself, indicated he frequently witnessed "very rough" restraints, including one time when a classmate was repeatedly slammed into a locker by a staff member who was laughing and smiling.
- DLC viewed video surveillance and reviewed a special education expert report of multiple restraints involving three teenage students. Staff repeatedly grabbed, pushed and pulled the students and placed students in unsafe and improper holds. The special education expert who reviewed the footage found:

**"The staff's inconsistent and inappropriate responses to the situation resulted in increased numbers of holds, restraints as well as increased time spent on restraining the children. These responses escalated the behaviors of the children. The failure of the staff to implement approved de-escalation and restraints consistent with high qualified CPI [Crisis Prevention Institute] likely resulted in increased use of physical force and increased behavioral responses from children."**

- b. TCS staff also ignored student concerns about physical distress and failed to take into account sexual assault and trauma history prior to restraint intervention in violation of state regulations.<sup>9</sup>**

- The parent of the high school student who was slammed into the HVAC indicated that her son reported he told staff they were hurting him and staff replied “Shut up. I don’t care.” TCS senior administrators reported that they were not made aware of this incident.
- Another mother indicated that she witnessed a restraint on a student (not her child) who was telling staff he could not breathe during the restraint. Staff told him, “you would not be able to talk, if you couldn’t breathe” and continued with the restraint.
- A father reported that for his 11-year-old son, who was previously sexually assaulted, being restrained was a trigger. The father indicated he attempted to discuss this issue with TCS staff, but they repeatedly restrained his son almost daily, even as it made his behaviors worse. He noted his son has become more violent and dysregulated after the restraints due to his trauma.
- In another student file DLC reviewed, a doctor’s note indicated that this student, with mental illness and trauma history, should not be placed in time-out hold rooms (this had previously triggered many behavioral escalations and restraints). However, TCS staff continued to place her in the time-out room and restrain her when escalated against the advice of her doctor and the IEP Team (IEP Team noted she was triggered by “feeling stuck in time out room” and “hands-on/threat of hands-on”).

**c. TCS staff repeatedly placed students in restraints in response to property destruction, insubordination and verbal threats when no imminent harm was present in violation of state regulations.<sup>10</sup>**

- A high school student whose record DLC reviewed, was restrained repeatedly over a 45 minute period for “sprinting through the school attempting to encourage others to join her.” While this is certainly disruptive, she was not harming herself or other students, merely eloping from class noisily.
- She was restrained two other times for destroying school property (pulling items off a desk in one instance and ripping cabinet doors off the wall in another), which is clearly prohibited by state regulations.<sup>11</sup>
- A middle school student, whose record DLC reviewed, was also restrained for attempting to leave school grounds without any clear indication of the imminent harm. He was also restrained in the parking lot after he threatened to punch a staff member and then ran away from the staff member (thus, eliminating the imminent harm).

**d. TCS staff often intentionally antagonized student behavior to “justify” a restraint.**

Staff repeatedly blocked students from entering the cafeteria, exiting the building, or entering a different wing of the building.<sup>12</sup> When the student would attempt to push past

staff, staff would use the push as justification to restrain the student, when simply allowing the student to pass was a safe option. For instance:

- In the surveillance video DLC reviewed, staff repeatedly stood in front of a student “blocking” him or her from moving in a given direction, but when the student attempted to push past, he or she would be restrained, even though allowing the student to pass was a safe option.
- At one point in the video footage, a staff member also stood near a locker and shoulder-bumped a female student to provoke a reaction.
- The student records DLC reviewed demonstrated this pattern dozens of times. An escalated student would attempt to leave a designated area and would be “blocked” by staff, which would prompt a physical escalation in events and ultimately restraint or restraints.
- There are multiple reports from students and parents that staff called students names like “a\*\*h\*\*\*,” “retard,” “SPED” prior to or during restraints, which further purposely antagonized student behavior. When this was reported to TCS, staff members were immediately terminated.

**e. TCS staff also failed to both properly report restraints to parents and to properly conduct required internal restraint reviews.**

In more than half the paperwork in the three student files we reviewed, parents were not informed in writing of the restraints.<sup>13</sup> Additionally, if the parents were sent a short restraint report, it did not include key details outlined in the separate incident reports. One high school student’s record reveals multiple restraints lasting for more than 20 minutes, but no required approval process is noted in the restraint report.<sup>14</sup>

Additionally, TCS failed to implement effective restraint reviews and staff training. School staff must review each restraint and patterns of restraints in order to develop appropriate, less intrusive behavioral interventions.<sup>15</sup> Staff are also required to be trained on the school’s behavior support and restraint policy.<sup>16</sup> TCS administration informed DLC that it reviews individual restraint and patterns of restraint with staff. TCS administration also indicated that all staff members are trained through hands-on CPI trainings, multiple restraint form trainings and other de-escalation trainings. However, based on the findings above, DLC concludes the quality and consistency of TCS’ training and review practices are insufficient to reasonably prevent restraint injury.

**2. TCS staff frequently misused exclusionary time-out as a place to discipline and sequester unruly students for extended periods of time.**

In Massachusetts exclusionary “time-out” is legally defined as temporarily separating a student from the classroom for the purposes of calming. In order for time-out to be compliant with state regulations: (1) it must be used for calming, not punishment, (2) the

student must be continuously observed by a staff member, (3) the space must be appropriate for calming, and, (4) the time-out must end when the student is calm.<sup>17</sup> Additionally, if the use of exclusionary time-out exacerbates a student's behavior, or after 30 minutes it has not helped to calm a student, then other behavioral strategies should be attempted.<sup>18</sup>

TCS has three time-out hold areas, each with concrete walls, tile flooring and harsh florescent overhead lighting. Two of the time-out rooms are right next to each other. One of the time-out rooms has mats bolted to the walls (the other two are bare) and one room had a desk in it at the time of DLC's visit. Staff explained that the time-out hold areas can be closed and locked, but staff is always available to students. TCS staff also indicated they provide appropriate sensory toys to students as needed, but they are not stored in the time-out rooms. TCS staff also indicated sometimes students elect to come to the time-out area for breaks. Several parents confirmed this, but our investigation also found concerning examples of time-out misuse. For example:

- Several parents indicated their children reported being left in the time-out areas for several hours or even most of the school day.
- One parent noted he was called to pick up his son early, who he found curled up in a ball on the floor of an empty time-out room crying. The eleven year old explained that he had been taken to the room in the morning and left there for several hours.
- Two other parents, of a 7-year-old and an 8-year-old, respectively, indicated their children reported being taken to the time-out room multiple times a day. Both parents expressed concern that it exacerbated their children's behavioral issues and was not effective at calming, yet repeatedly used.
- A former high-school-aged student described being frequently sent to a time-out room with a door. He noted staff would sit on the floor in front of the door, so he could not remove himself. He noted he sometimes spent several hours like this (even after he had calmed down). He described the experience as "isolating."

Our investigation also found repeated use of time-out as a behavioral intervention, even after it became clear that the intervention exacerbated a student's behavioral issues. For example a high-school-aged student, whose record DLC reviewed, demonstrated a pattern, month after month, of repeated use of time-out when it was not calming/effective for this particular student. As a sample, here is her time-out record for November 2017:

- Student smoking a cigarette in school and threatened staff when took away paraphernalia, sent to time-out area and became extremely escalated in time-out area and had to be restrained three times.

- Student wandering halls and refused to go to class, staff asked her to go to time-out. She immediately tried to push away from staff, who physically escorted her to time-out, where she tried to swing at staff and was restrained.
- Student attempted to break or escape (unclear in record) through window and exit school building. Student taken to time-out area, as she was being taken to time-out area became very physical with staff and had to be restrained in time-out area repeatedly because she was so escalated.
- Attempted to run away from staff and was physically escorted to time-out, where she had to be repeatedly restrained for over 30 minutes as her behavior escalated.

The practice of leaving a child in a time-out room after he or she has calmed down or for extended periods of time violates state regulations and is harmful and ineffective at improving behavioral compliance. In the same vein, the continued use time-out as a behavior intervention strategy for a student who has repeatedly behaviorally escalated in time-out, is detrimental and unproductive.

### **3. TCS engaged in improper disciplinary practices.**

#### **a. Frequent Informal Disciplinary Exclusions**

In Massachusetts, a private school cannot remove a student from school for a disciplinary offense without abiding by suspension procedures.<sup>19</sup> There is no legal option to “agree” to pick up a child early as a result of student misbehavior. However, in two of the three student files DLC reviewed, staff members noted they called parents to come pick students up early from school during or after a behavioral incident. These were not documented suspensions, but as early dismissals. Both student’s parents indicated the school threatened to call the police or mobile crisis intervention if the family did not come to collect the student. Two additional parents interviewed reported being called to pick up their children early for misbehaviors without any formal process. These were not genuine early dismissals (e.g. for doctor’s appointments), but instead informal, disciplinary exclusions at odds with the state’s discipline regulations.

#### **b. Disability-Related Long-Term Disciplinary Exclusion**

Under federal law, schools cannot change a student’s IEP placement for disciplinary reasons, if it determines the student’s conduct is related to his or her disability.<sup>20</sup> In at least one instance, TCS staff suspended a student from her IEP placement, after the IEP Team determined her conduct (assaulting staff and disturbing school assembly) were related to her disabilities.<sup>21</sup> She was formally suspended for 18 days in a school year -- four of these days after the IEP Team determined the removals were a pattern constituting a change in placement and her repeated behaviors were a manifestation of her disability. There’s also no record that TCS staff consulted with at least one of her teachers to determine what educational services she needed in order to make

educational progress after she had been suspended for more than 10 days in violation of federal law.<sup>22</sup>

Research indicates that repeated school exclusions are likely to cause psychological harm and to have a detrimental impact on school performance and outcomes.<sup>23</sup> TCS's non-compliant disciplinary practices fail to address students with disabilities' underlying behavioral issues and likely have a negative psychological impact.

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## **B. Neglect**

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### **1. TCS neglected students with disabilities by failing to provide a safe environment by not maintaining adequate numbers of trained staff, which resulted in both the over-criminalization of disability-related behavior and the failure to take appropriate steps to prevent harassment and peer assault.**

TCS exclusively serves special education students with social-emotional and behavioral manifestations of their disabilities. Each student's IEP Team and home school district has determined that the students' intensive behavioral needs require therapeutic intervention in a special education day program with specialized knowledge, special education staff and therapeutic interventions not otherwise available in a neighborhood school. However, TCS, was unable to appropriately handle its populations' behavioral escalations, overly relied on police intervention for everyday behavioral issues and did not adequately or appropriately prevent peer-on-peer violence. This was largely due to extremely high staff turnover as well as questionable training and oversight practices.

TCS had an extremely high staff turnover rate during the 2017-2018 school year. At the time of the site visit, the school had eight full-time teachers, only half of which were special education licensed. Two of the teachers were unlicensed substitutes. TCS noted it had posted the teaching positions, but had not been able to fill them for several months. In May 2018, the garden center teacher, auto teacher and physical education teacher had all resigned within the school year. TCS also noted it had extremely high turnover for Instructional Assistants ("IA"), also known as paraprofessionals. It appears many were not employed more than a few months. DCF investigation records highlight the rapid staff turnover and inexperienced/untrained staffing problems. For instance:

- DCF substantiated a neglect finding on an Instructional Assistant ("IA") who pushed and grabbed a student's neck three weeks after he was hired. TCS terminated him. In the short month-long investigation period, the teacher of the student's classroom also quit for unknown reasons.

- DCF substantiated a neglect finding against TCS generally after the Easthampton Police Department referred a case to DCF where TCS lost four students who left school grounds (one was not found until 9 hours later). The Director of Operations initially called the police indicating two students eloped from school grounds, but did not need police assistance. She called back 20 minutes later and indicated they were now missing four students and needed police assistance. The police noted to DCF that this pattern of calls from TCS happens “all the time.”

**The DCF investigation revealed that the students’ unlicensed teacher was a substitute from a temp agency and her Instructional Assistant (IA) was new and on a probationary period. The IA could not explain the protocol for different student safety statuses (one student who led the escape was supposed to be in arms-length of staff at all times). The teacher could also not explain how the student left the room without staff. During the month-long investigation period, the teacher was terminated, the IA quit and the Director of Operations resigned from her role.**

- DCF found probable cause for neglect against an IA for failing to follow proper restraint and de-escalation procedures when he placed a student in a headlock-like position. The IA resigned after the incident. DCF also noted during its investigation: “[The teacher of the classroom where IA incident took place] was very scattered throughout the interview process, his thoughts were not sequential and often had to be asked questions several times for him to remember what happened.”

Police records also reveal extremely concerning trends in staff training, expertise and oversight. Without even counting the inexplicable dozen 911 hang-up calls, TCS staff called the police 35 times from September 5, 2017 until May 7, 2018 -- on average, about once every four school days. The 911 calls were primarily for students leaving campus, or for unruly student behavior. These calls led to TCS students being charged with 34 separate criminal or juvenile crimes for school-related incidents. Some of these students had no prior criminal record. The most common charge was “Disturbing School Assembly” – in essence, student disruption.<sup>24</sup> The second most frequent charge was “Malicious Destruction of Property.” In effect, TCS staff repeatedly called the police to intervene when its special education students with serious social/emotional and behavioral disabilities were dysregulated, disruptive and breaking things. Local school districts’ referred these students to a specialized school for therapeutic intervention, but many instead left with an avoidable criminal or juvenile court record.

DLC does not oppose a school calling the police when a serious threat to school safety occurs, but the frequency and types of behaviors TCS referred to police were often inappropriate referrals that should have been handled by appropriately trained school staff or referred to mobile crisis for medical intervention. For example:

- TCS staff called police and indicated a student had a “knife” and was threatening self-harm. When police arrived, they discovered the weapon was not a knife, but a paperclip.
- TCS staff called the police alleging a student-on-student fight. When police arrived, discovered no student fight, but three students who attempted to repeatedly escape restraints. All three were charged with Disturbing School Assembly.
- TCS reported to police that a student had intentionally thrown a hard ball at a glass backboard during gym, shattering it. The student had a cognitive impairment and was previously deemed incompetent by Worcester County Courts, but TCS pursued charges against the student anyway.
- TCS called for police intervention when a student was “kicking” vehicles in the parking lot.
- TCS staff called the police when an “aggressive” student with no weapons refused to leave school property.
- TCS staff called the police when a student got into a verbal altercation with a staff member.

These incidents did not require police intervention. TCS staff did not appear to have a clear protocol on when staff members should and should not refer behavioral incidents to law enforcement. Moreover, the overuse of the police department as an intervention points to a lack of staff expertise and training in management of children with complex behavioral disabilities. Additionally, TCS staff did not appear to have a solid protocol for calling or working with the police when a student left the school building or school grounds. At times, TCS would call as soon as the student left the building. Other times, TCS did not call until after TCS staff could not locate the student. These inconsistencies create unsafe situations for volatile students who have eloped from campus.

The police records, student records and parent interviews also raised concern about amount of peer-on-peer violence and bullying that frequently occurred at TCS. There were multiple large-scale student fights that resulted in multiple arrests. Additionally, student records revealed many incidents of extreme disorder (multiple students running around the school, smashing or jumping out windows, screaming and yelling, fighting with staff and students). Parents whom DLC interviewed also reported incidents of bullying and student fights that were not reported to parents, where children came home with bruises, broken glasses and cuts from scuffles at school. Parents also indicated

that students are not allowed to use cell phones in school, but the policy was not enforced, which fueled student “drama.” Moreover, multiple students and parents reported that teachers are on cell phones during class time and not paying attention to students. Ultimately, the combination of untrained staff, high turnover, inconsistent implementation of policy and little oversight has created an unsafe environment at TCS for students with disabilities.

## **2. TCS neglected students with disabilities by failing to establish or carry out appropriate social/emotional and behavioral support plans and services.**

TCS staff failed to establish appropriate individualized behavioral interventions for students with repeated behavioral issues. The IDEA specifically requires the IEP Team to consider the use of positive behavioral interventions and supports, and other strategies, to address behavior for any child with a disability whose behavior impedes his learning or that of others.<sup>25</sup> Overall, TCS failed to consider program modifications, supports for school personnel, teacher training/coaching, or other tools to appropriately address students with disabilities’ social/emotional needs.<sup>26</sup>

One middle school student, whose file DLC reviewed, had a Behavior Intervention Plan (“BIP”) that was developed by an unlicensed substitute teacher without first conducting a Functional Behavioral Assessment (“FBA”). The purpose of an FBA is to isolate a target behavior that interferes with the student’s ability to make progress and develop a theory regarding the function of the target behavior. Once the target behavior is identified and the theory developed, a positive BIP can be prepared to address the target behavior.<sup>27</sup>

Without assessing the function of the student’s behavior, a BIP cannot be reasonably calculated for a student to make behavioral progress. Unsurprisingly, without an appropriate evaluation by a qualified professional, the plan was unsuccessful and the student had increased behavioral issues after the plan was developed. In another file DLC reviewed, a high school student had dozens of behavioral incidents that resulted in multiple suspensions during the 2016-2017 and 2017-2018 school year (work refusal, on cell phone, verbal threats, eloping, and insubordination). However, TCS staff did not evaluate or develop an individualized BIP for him.

Additionally, overall, TCS staff were ill-equipped to appropriately intervene for students and improve behavioral and academic outcomes. TCS staff resorted to restraints and police intervention prior to utilizing trauma-informed de-escalation techniques.

## **V. Required Remedial Plan**

In order to address the concerns identified above, TCS has closed its program. It's anticipating re-opening in the 2019-2020 school year with a new trauma-informed care school model. TCS agrees to notify DLC six months prior to re-opening. TCS also agrees to create a detailed measurable remedial plan and submit this plan to DLC, which includes the following elements:

#### **A. Modification of Restraint Policies and Procedures**

1. TCS will cease utilizing restraints as a behavioral management tool, and only utilize restraints as a matter of last resort to prevent imminent, serious physical harm after less intrusive behavioral interventions have failed.
2. TCS will re-develop policies for administrative and individual reviews of restraints (e.g. standardized process for pulling video surveillance, conferencing with staff involved and developing training tools and improvement plans).
3. TCS will re-vamp parent contact and reporting practices, to ensure parents are notified in writing within 3 days and receive a copy of the restraint and incident reports.

#### **B. Modification of Time-Out Policies and Procedures**

1. TCS will eliminate the use of the time-out areas as a disciplinary tool.
2. TCS will ensure time-out rooms are only utilized for the purpose of calming and once a child is calm, the student will immediately be returned to his or her classroom.
3. If TCS attempts an exclusionary time-out for the purposes of calming and the student escalates in the time-out area; TCS will cease utilizing the ineffective behavior management tool for that particular student.
4. TCS will create time-out room logs. Here, TCS will record student's name, staff observer, reason removed from classroom, time entered room, and time left room and emotional state at the end of the time-out.

#### **C. Modification of School Exclusion Policies and Procedures**

1. TCS will cease informal disciplinary removals and comply with state regulations regarding school exclusions.

2. TCS will update its short-term suspension policies to ensure proper due process is followed and families are involved in determining potential alternatives to exclusion.
3. TCS will update its manifestation determination procedures to ensure that students who face a pattern of removals constituting a change in placement receive due process protections and are not wrongfully removed for disability-related conduct.

#### **D. Written Restraint Prevention and Behavior Support Policies & Procedures**

1. TCS will re-develop written restraint prevention and behavior support policies and procedures that consider trauma-informed de-escalation approaches.
2. TCS will develop a working protocol for considering student's physical, psychological or trauma backgrounds prior to utilizing a restraint on a student.
3. TCS will re-develop its policy surrounding school building and school ground elopement (e.g. when to notify parents, when to notify police, standardized documentation of incident report).
4. TCS will develop a protocol for police intervention (e.g. who has the authority to call police, under what circumstances, protocol for review of incident).
5. TCS will develop a working protocol to investigate physical altercations and peer harassment between students.

#### **E. Modifications to Staff Training on Restraint Prevention and Behavior Support**

1. TCS will re-visit all-staff restraint prevention and behavior support trainings in order to include trauma-informed care models, more in-depth de-escalation training, a means to measure participants to demonstrate proficiency in administering restraints, and information on the psychological and physical impacts of restraint on students and families.
2. TCS will increase the amount of time staff spends on restraint and behavioral support training as well as increase the amount of daily, weekly and monthly review time staff spends on restraint and behavioral de-escalation practices.
3. TCS will ensure the effectiveness of all restraint prevention and behavioral support trainings through staff proficiency examinations and unscheduled check-ins or reviews with administrators to ensure retention.

## **F. Implementation of IEPs and Consideration of Social/Emotional Supports**

1. When a student with a disability's behavior impedes his or her learning or that of others, TCS will immediately consider program modifications (e.g. FBA and BIP), supports for school personnel, teacher training/coaching, or other tools to appropriately address students with disabilities' social/emotional needs.

## **G. Increase Qualified Staffing**

1. TCS will review and re-develop its qualified teacher, administration and IA hiring practices to ensure that licensed, qualified, non-temporary staff are hired for relative positions.
2. TCS will ensure at least one qualified behaviorist is hired for staff consults as well as, when needed, evaluation and direct services for students with disabilities.
3. TCS will develop and implement a plan for improving staff retention and reducing turnover.

## **VI. Monitoring**

DLC is also seeking that TCS cooperate and help facilitate DLC's monitoring of this remedial plan for a period of 12 months after TCS re-opens. After 12 months, DLC will determine whether any further action/monitoring is required. The monitoring will include the following:

### **A. Record Review**

On a quarterly basis, TCS will provide DLC with the following records:

1. All restraint and behavioral support policies and procedures
2. All restraint and behavioral support trainings
3. Current protocol for considering student's physical, psychological or trauma backgrounds prior to utilizing restraints
4. Current protocol for investigating physical altercations and peer harassment between students
5. Current elopement policies
6. Current police intervention policy
7. Current protocol for referring students to the behaviorist for evaluation and intervention
8. Current staff retention rate and status of improvement plan
9. All restraint reports
10. All incident reports

11. All short or long-term suspension notices and hearing decisions
12. All time-out room logs
13. All notes from administrative and individual restraint review meetings
14. All early dismissal logs
15. Any other internal record or document reflecting corrective action taken involving the violations in this report.

## **B. On Site Monitoring**

Within 30 days of receiving the above quarterly reports, DLC may conduct an on-site visit. These visits will include staff interviews, building tours, and classroom observations.

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<sup>1</sup> See 45 C.F.R. § 1386.19 (defining probable cause under PADD as “a reasonable ground for belief that an individual with developmental disability(ies) has been or may be subject to abuse and neglect.” See also 42 C.F.R. § 51.2 (defining probable cause under PAMII in a substantially similar manner). See also 42 U.S.C. § 10801(a)(1)(A); 29 U.S.C. § 794e(f)(2); 42 U.S.C. § 300d-53(k) (defining authority to investigate abuse and neglect when P&A receives reports of incidents of abuse and neglect or determines there is probable cause).

<sup>2</sup> See 45 C.F.R. § 1386.19 (defining “complaint” as “includes, but is not limited to, any report or communication, whether formal or informal, written or oral, received by the P&A system, including...electronic communications, telephone calls (including anonymous calls) from any source alleging abuse or neglect of an individual with a developmental disability.” See also 42 U.S.C. § 10805(a)(1)(A) (noting P&A authority to “investigate incidents of abuse and neglect of individuals with mental illness if the incidents are reported to the system.”).

<sup>3</sup> See 45 C.F.R. § 1386.19 (stating the P&A makes a determination of probable cause based on “reasonable inferences” drawn from experience involving similar incidents and problems surrounding abuse and neglect).

<sup>4</sup> 42 U.S.C. § 15043(a)(2)(B). 42 U.S.C. § 10805(a)(1)(A); See also 29 U.S.C. § 794e(f)(2); 42 U.S.C. § 300d-53(k).

<sup>5</sup> DLC has identical authority under the PAIR statute for individuals who do not fall within the PADD and PAIMII statutes. See 29 U.S.C. § 794(e)(f)(2) (stating that P&A’s have the same investigation authority for people who meet the definition set forth in 29 U.S.C. § § 794(a)(1)(b) as the P&A has for people with developmental disabilities).

<sup>6</sup> See *Connecticut Office of P&A for Persons with Disabilities v. Hartford Bd. of Edu.*, 464 F.3d 229, 242 (2nd Cir. 2006). See 45 C.F.R. § 1386.19; 42 C.F.R. § 51.2 (defining probable cause under PADD and PAMII).

<sup>7</sup> *Protection and Advocacy for Persons with Disabilities v. Armstrong*, 266 F.Supp.2d 303, 320 (D.Conn.2003), quoting *Arizona Ctr. for Disability Law v. Allen*, 197 F.R.D. 689, 693 (D.Ariz.2000). *Gerard Treatment Programs, L.L.C.*, 152 F.Supp.2d at 1159 (noting that a P & A system determines when probable cause exists, and access cannot be denied because a facility disagrees with the determination).

<sup>8</sup> A restraint is defined as when a school staff member physically uses force with a student to prevent or restrict a student’s freedom of movement. See 603 C.M.R. § 46.02. Restraints may only be utilized as a matter of last resort to prevent imminent, serious physical harm after less intrusive behavioral interventions have failed (or are deemed inappropriate under the circumstances). 603 C.M.R. §

46.03(1)(c). Restraints must be administered using the “safest method” with the least amount of physical force necessary to prevent imminent harm. 603 C.M.R. §§ 46.05(2)-(3).

<sup>9</sup> Schools must also consider medical, psychological and trauma-history limitations of students prior to restraint intervention, and immediately cease a restraint if a child is in physical distress (e.g. difficulty breathing). 603 C.M.R. §§ 46.05(5)(b)-(d).

<sup>10</sup> Massachusetts prohibits the use of restraints in response to property destruction, disruption of school order, insubordination or verbal threats when those actions do not constitute imminent physical harm. See 603 C.M.R. §§ 46.03(1)(c); 46.03(2)(c).

<sup>11</sup> See *id.*

<sup>12</sup> TCS administration noted that high school students were sometimes restrained to prevent them from entering the middle school wing for safety reasons. However, the administration also noted that the door is locked from the high school side and can only be opened from the middle school wing. Thus, an older student could run towards the door and bang on it, but would not be able to pass into the elementary wing (i.e. eliminating imminent harm without restraint).

<sup>13</sup> After a restraint, schools must notify parents orally within 24 hours and in writing within three days. 603 C.M.R. § 46.06(3).

<sup>14</sup> See 603 CMR § 46.05(5)(c) (requiring justification and approval from the principal for continuing a restraint longer than 20 minutes).

<sup>15</sup> See 603 C.M.R. § 46.06(4)-(6).

<sup>16</sup> 603 C.M.R. § 46.04.

<sup>17</sup> 603 C.M.R. § 46.02.

<sup>18</sup> See Massachusetts Department of Elementary and Secondary Education, *Technical Assistance Advisory SPED 2016-1: Time-out and Seclusion* (Jul. 31, 2015), available at: <http://www.doe.mass.edu/sped/advisories/2016-1ta.html>.

<sup>19</sup> See 603 C.M.R. § 18.05(7)(b) (noting within 24 hours parents must receive a written statement explaining the reasons for the suspension)

<sup>20</sup> See 34 C.F.R. § 300.530(e).

<sup>21</sup> Schools may remove a student with an IEP to an Interim Alternative Educational Placement for up to 45 school days, if the student inflicts serious bodily injury on staff. See 34 C.F.R. § 300.530(e). However, in this instance, no injury – not even a minor injury - was inflicted.

<sup>22</sup> See 34 C.F.R. § 300.530(d)(4).

<sup>23</sup> See *Breaking schools' rules: a statewide study of how school discipline relates to students' success and juvenile justice involvement*, Council of State Governments Justice Center and the Public Policy Research Institute (2011),

available at [https://csgjusticecenter.org/wp-content/uploads/2012/08/Breaking\\_Schools\\_Rules\\_Report\\_Final.pdf](https://csgjusticecenter.org/wp-content/uploads/2012/08/Breaking_Schools_Rules_Report_Final.pdf); Not Measuring Up: The State of School Discipline in Massachusetts, Lawyer's Committee for Civil Rights and Economic Justice (2014), available at: [http://lawyerscom.org/wp-content/uploads/2014/11/Not-Measuring-up\\_-The-State-of-School-Discipline-in-Massachusetts.pdf](http://lawyerscom.org/wp-content/uploads/2014/11/Not-Measuring-up_-The-State-of-School-Discipline-in-Massachusetts.pdf).

<sup>24</sup> After the passage of the Criminal Justice Reform Bill, juveniles in Massachusetts can no longer be charged with “Disturbing School Assembly” on school property or at school-related events due to its contribution to the school-to-prison pipeline phenomena for non-serious student disruption. See Senate, No. 2371, “An Act relative to criminal justice reform,” available at:

<https://malegislature.gov/Bills/190/S2371>.

<sup>25</sup> 20 U.S.C. § 1414(d)(3)(B)(i). See also United States Department of Education, Office of Special Education and Rehabilitative Services, August 1, 2016 “Dear Colleague” Letter (“OSERS August 1, 2016 ‘Dear Colleague’ Letter”), at 4, available at: <http://www2.ed.gov/policy/gen/guid/school-discipline/files/dcl-on-pbis-in-ieps--08-01-2016.pdf> (“Incidents of child misbehavior and classroom disruptions, as well as violations of a code of student conduct, may indicate that the child’s IEP needs to include appropriate behavioral supports...To the extent a child’s behavior including its impact and consequences...impeded the child’s learning or that of others, the IEP Team must consider when, whether and what aspects of the child’s IEP related to behavior need to be addressed or revised to ensure FAPE.”)

<sup>26</sup> See OSERS August 1, 2016 “Dear Colleague Letter”, at 7.

<sup>27</sup> See *Broward County Sch. Bd.*, 110 LRP 38160 (SEA FL 05/07/10). See also *Independent Sch. Dist. No. 2310*, 29 IDELR 330 (SEA MN 1998).