



Karen B. Salmon, Ph.D.
State Superintendent of Schools

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December 19, 2017

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Mr. Philip A. Lynch
Director of Special Education Services
Montgomery County Public Schools
850 Hungerford Drive, Room 230
Rockville, Maryland 20850

RE: XXXXX
Reference: #18-030

Dear Parties:

The Maryland State Department of Education, Division of Special Education/Early Intervention Services (MSDE), has completed the investigation of the complaint regarding special education services for the above-referenced student. This correspondence is the report of the final results of the investigation.

ALLEGATION:

On October 27, 2017, the MSDE received a complaint from Ms. XXXXXXXXXXXX, hereafter, “the complainant,” on behalf of her daughter, the above-referenced student. In that correspondence, the complainant alleged that the Montgomery County Public Schools (MCPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) and related state requirements with respect to the student.

The MSDE investigated the allegation that the MCPS did not ensure that proper procedures were followed when utilizing restraint with the student, in October 2017, in accordance with COMAR 13A.08.04.

BACKGROUND:

The student is eleven years old and currently attends XXXXXXXXXXXXXXXX Montgomery County, a nonpublic separate special education school where she was placed by the MCPS. Prior to November 6, 2017, she attended the XX

XXXXXX (XXXX), a public separate special education school. She is identified as a student with an Emotional Disability, under the IDEA, and has an Individualized Educational Program (IEP) that requires the provision of special education and related services.

FINDINGS OF FACTS

1. On October 11, 2017, at 11:10 AM, the XXXX school staff reported that the student exhibited “aggression toward staff” and was “punching staff.” The staff reported that they attempted redirection, proximity intervention, verbal interventions and de-escalation with the student prior to implementing restraint. The staff applied a “team control position”¹ physical restraint for 10 minutes and secured the student in a safety chair mechanical restraint for 35 minutes. The staff further reported that the student was struggling and spitting during the restraint, and that the student had removed some of the straps used in the mechanical restraint. No injuries were documented by staff following the restraint.
2. On the same day, at 1:10 PM, the school staff reported that the student exhibited “aggression toward staff” and making self-injurious statements. The staff reported that they attempted redirection, proximity intervention, verbal interventions and de-escalation with the student prior to implementing restraint. The staff applied a “team control position”¹ physical restraint for 11 minutes and secured the student in a safety chair mechanical restraint for 27 minutes. No injuries were documented by staff following the restraint.
3. There is documentation that all of the staff members involved in implementing the restraint with the student are trained in the appropriate use of physical restraint. Each staff member involved with applying or who observed the restraint, and the administrator informed of its use, were listed and signed the restraint documentation.
4. There is documentation that the complainant was notified of the use of restraint with the student within 24 hours of its use.
5. XXXX is certified as meeting the requirements of the Joint Commission for the Accreditation of Healthcare Organizations (JCAHO) to use mechanical restraints.
6. On October 16, 2017, the IEP team met to discuss the student’s placement. The IEP team discussed the events leading to the use of restraint with the student. The complainant raised concerns about the safe use of restraints and bruising and neck strain injury that she reported the student received from the restraint. The school staff explained that this is possible when students struggle, and that all staff were trained in the proper use of restraint. The complainant indicated that she did not feel the student was safe in her current placement given the restraint incidents that occurred. The team did not discuss the

¹ The “team control position” requires two adults to position themselves on each side of the student, with the student’s arms secured (<http://www.crisisprevention.com>).

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need for a Functional Behavior Assessment (FBA) or updates to the student's Behavior Intervention Plan (BIP). At the meeting, the team did not make a determination regarding the student's placement.

7. On October 26, 2017, the IEP team met again and reviewed the student's placement. The IEP team determined that the student would be placed in a nonpublic separate special education school and that an application would be made to XXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXX.
8. The student did not attend school from October 12, 2017 to November 6, 2017, when her placement was changed, due to the complainant's concern for the student's safety at XXXX.

CONCLUSIONS:

Physical Restraint

In this case, the complainant alleges that the school staff did not properly utilize restraint with the student. Based on Findings of Facts #1-#5, the MSDE finds that the school staff met the procedural requirements of COMAR 13A.08.04. with regard to documenting its use.

However, based on Finding of Facts #6-8, the MSDE finds that the IEP team did not properly consider the need for an updated FBA or revisions to the student's BIP, as required by COMAR 13A.08.04.05. Therefore, this office finds that a violation occurred.

Mechanical Restraint

The use of mechanical restraint is prohibited in public agencies and nonpublic schools unless a public agency or nonpublic school is certified by and meets the requirements of the JCAHO (COMAR 13A.08.04.05A (2)).

Based on Finding of Fact #5, the MSDE finds that XXXX meets the requirements of and is certified by the JCAHO.

Notwithstanding this finding, the complainant may also file a complaint with the JCAHO by contacting them at:

Office of Quality and Patient Safety
The Joint Commission
One Renaissance Boulevard
Oakbrook Terrace, Illinois 60181

A complaint may also be filed online at:

https://www.jointcommission.org/report_a_complaint.aspx

CORRECTIVE ACTIONS/TIMELINES:

Student Specific

The MSDE requires the MCPS to provide documentation, by February 1, 2017, that the IEP team has met to consider the need for an updated FBA or BIP for the student. When meeting, the IEP team must also determine the compensatory services or other remedy to address the time period that the student did not attend school due to the lack of IEP team review to ensure that the student would be provided with appropriate behavioral supports.

School Based

The MSDE requires that the MCPS provide documentation by March 1, 2018, of the steps taken to ensure that the XXXX staff comply with the requirements to ensure that the IEP team meets to consider the appropriateness of revisions to a student's FBA or BIP when required following the use of restraint on a student. The documentation must include a description of how the school system will evaluate the effectiveness of the steps taken and monitor to ensure that the violations do not recur.

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

TECHNICAL ASSISTANCE:

Technical assistance is available to the complainant and the MCPS by Dr. Nancy Birenbaum, Compliance Specialist, Family Support and Dispute Resolution Branch, MSDE. Dr. Birenbaum can be reached at (410) 767-7770.

Please be advised that both the complainant and the MCPS have the right to submit additional written documentation to this office, which must be received within fifteen (15) days of the date of this letter, if they disagree with the findings of facts or conclusions reached in this Letter of Findings. The additional written documentation must not have been provided or otherwise available to this office during the complaint investigation and must be related to the issues identified and addressed in the Letter of Findings.

If additional information is provided, it will be reviewed and the MSDE will determine if a reconsideration of the conclusions is necessary. Upon consideration of this additional documentation, this office may leave its findings and conclusions intact, set forth additional findings and conclusions, or enter new findings and conclusions. Pending the decision on a request for reconsideration, the school system must implement any corrective actions within the timelines reported in this Letter of Findings.

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Questions regarding the findings and conclusions contained in this letter should be addressed to this office in writing. The complainant and the school system maintain the right to request mediation or to file a due process complaint, if they disagree with the identification, evaluation, placement, or provision of a Free Appropriate Public Education (FAPE) for the student, including issues subject to this State complaint investigation, consistent with the IDEA. The MSDE recommends that this Letter of Findings be included with any request for mediation or a due process complaint.

Sincerely,

Marcella E. Franczkowski, M.S.

Assistant State Superintendent

Division of Special Education/Early Intervention Services

MEF:gl

c: Jack R. Smith
Tracee Hackett
XXXXXXXXXX
Dori Wilson
Anita Mandis
Gerald Loiacono
Nancy Birenbaum