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January 29, 2018

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Mr. Philip A. Lynch  
Director of Special Education Services  
Montgomery County Public Schools  
850 Hungerford Drive, Room 225  
Rockville, Maryland 20850

RE: XXXXX  
Reference: #18-049

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 December 5, 2017, the MSDE received a complaint from Ms. XXXXXXXXXXXXXXXX, hereafter, “the complainant,” on behalf of her son, 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) with respect to the above-referenced student.

The MSDE investigated the allegation that the MCPS did not ensure that proper procedures were followed when seclusion and physical restraint were used with the student between September 6, 2017 and October 18, 2017, in accordance with COMAR 13A.08.04.

**BACKGROUND:**

The student is 16 years old and is identified as a student with Multiple Disabilities under the IDEA, including Autism, an Intellectual Disability, and Other Health Impairments. He has an Individualized Education Program (IEP) that requires the provision of special education instruction and related services.

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The student attended XXXXXXXXXXXXXXXXXXXX from the beginning of the 2017-2018 school year until December 4, 2017, when the complainant notified the MCPS that she was withdrawing the student from the MCPS and enrolling him in the XXXXXXX Public Schools as a result of a family move to XXXXXXX.

**FINDINGS OF FACTS:**

1. The student's Behavior Intervention Plan (BIP), dated May 16, 2017, states that "in the event that his behaviors present a danger to himself or others, staff may implement the Non-Violent Crisis Intervention techniques in accordance with MCPS policy and Maryland state regulations, including the use of MCPS approved physical restraint or seclusion." The BIP also indicates that, if the use of physical restraint or seclusion is required, the school shall notify parents within twenty-four (24) hours of the event.
2. There is documentation that between September 6, 2017 and October 18, 2017, the school staff utilized physical restraint with the student on eleven (11) occasions and utilized seclusion on three (3) occasions. The complainant reported that the student's negative behaviors were a result of the continuous staff changes made by the school. The documentation reflects that the physical restraints and seclusions resulted from physical attacks by the student on school staff and self-injurious behaviors displayed by the student. However, there is no documentation of the precipitating events immediately preceding the behavior that prompted the use of physical restraint or seclusion.
3. There is documentation that the school staff provided the complainant with written notifications of the use of physical restraint and seclusion within the required timeline. However, the notifications provided to the complainant about the type of intervention used is inconsistent with the documented interventions on the incident reports kept by the school staff.
4. The reports document which school staff implemented physical restraint and seclusion procedures during each incident. However, there is documentation that not all school staff were certified or trained in the implementation of those procedures.
5. On October 30, 2017, the complainant contacted the school staff to request an IEP team meeting to discuss the student's IEP, including the use of physical restraint and seclusion. There is documentation that the school staff attempted to schedule an IEP team meeting as early as November 15, 2017 but was unsuccessful in finding a date that was mutually convenient for both parties until December 15, 2017. However, the IEP team meeting was not held because, on December 4, 2017, the complainant notified the school staff that she had enrolled the student in the XXXXXXX Public Schools.

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**CONCLUSION:**

Based on the Findings of Facts #1 - #5, the MSDE finds that MCPS did not ensure that proper procedures were followed when using physical restraint and seclusion with the student, in accordance with COMAR 13A.08.04.05 and .06. Therefore, this office finds that a violation occurred with respect to the allegation.

**CORRECTIVE ACTION/TIMELINE:**

The MSDE requires the MCPS to provide documentation by May 1, 2018, of the steps taken to ensure that XXXXXXXXXXXXXXXXXXXX staff follow proper procedures when using behavior interventions as follows:

- a. That behavioral interventions are used only by school staff who are properly trained in their use; and
- b. That the use of behavioral interventions, including the events precipitating the behavior for which behavioral interventions are used, are properly documented and considered by IEP teams when determining how to address student behavior.

**TECHNICAL ASSISTANCE:**

Technical assistance is available to the parties by contacting Dr. Nancy Birenbaum, Compliance Specialist, Family Support and Dispute Resolution Branch, MSDE 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.

Questions regarding the findings and conclusions contained in this letter should be addressed to this office in writing. The parties 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.

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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:ac

c: Jack Smith  
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