



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

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July 27, 2018

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Selene Almazan Law, LLC.  
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Silver Spring, Maryland 20904

Ms. Trinell Bowman  
Executive Director  
Department of Special Education  
Prince George's County Public Schools  
John Carroll Elementary School  
1400 Nalley Terrace  
Landover, Maryland 20785

RE: XXXXX  
Reference: #18-175

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.

**ALLEGATIONS:**

On May 30, 2018, the MSDE received a complaint from Selene Almazan, Esq., hereafter, “the complainant,” on behalf of the above-referenced student and Ms. XXXXXXXXXXX, who serves as his parent under the IDEA. In that correspondence, the complainant alleged that the Prince George’s County Public Schools (PGCPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to the above-referenced student.

The MSDE investigated the following allegations:

1. The PGCPS did not ensure that proper procedures were followed when physical restraint was used with the student on February 9, 2018, in accordance with COMAR 13A.08.04.
2. The PGCPS has not followed proper procedures to ensure that Home and Hospital Teaching (HHT) services have been provided to the student since February 20, 2018, in accordance with COMAR 13A.05.01.10.

**BACKGROUND:**

The student is five (5) years old and is identified as a student with Autism under the IDEA. He attends XXXXXXXXXXXXXXXXXXXXXXXX and has an IEP that requires the provision of special education instruction and related services.

**FINDINGS OF FACTS:**

1. There is documentation that, on February 9, 2018, the school staff utilized physical restraint with the student. The documentation reflects that the student's precipitating events immediately preceding the behavior that prompted the use of restraint were "hitting his hand on his other hand, swinging his and others lunch bags, throwing food, and running around." There is also documentation that less intrusive interventions were attempted by the school staff prior to the use of physical restraint. However, there is no documentation indicating that physical restraint was necessary to protect the student or other person from imminent, serious, physical harm.
2. There is documentation that the school staff provided the complainant with verbal notification of the use of physical restraint within the required timeline. The documentation also reflects the length of time the student was placed in a physical restraint, indicates the school staff who observed, monitored, and implemented physical restraint, the student's behavior during the use of physical restraint, and the signature of the administrator who was informed of the use of physical restraint on the student. There is also documentation that the staff involved in the physical restraint incident were properly trained in its use.
3. On February 21, 2018, the IEP team convened to discuss the student's behavior and the incident which resulted in the use of physical restraint. The team decided that a Functional Behavior Assessment (FBA) was needed to develop a Behavior Intervention Plan (BIP) in order to address the student's behavior. However, the student's parent refused to provide consent for the assessment and indicated that she was considering removing the student from the school because she no longer had confidence in the program, and would instead seek HHT services.
4. On February 21, 2018, the student's parent submitted an application for HHT services along with documentation by the student's psychologist, which states that the student is "unable to attend school until an alternative placement is found." There is documentation which indicates that the PGCPs Office of Home and Hospital Teaching denied the request for services, stating that "HHT is not appropriate for students with disabilities who are waiting for a change of placement or awaiting enrollment in a nonpublic school or alternative program."
5. The student did not return to school after February 21, 2018, and there is no documentation that the PGCPs took steps to address compulsory school attendance requirements.

6. On April 17, 2018, the IEP team convened for an annual review. The team proposed to continue the provision of special education services at the school, and that the student would be referred to the Central IEP (CIEP) team for consideration of the educational placement for the 2018-2019 school year. The team also recommended a psychological and FBA be conducted, but the student's parent again, refused to provide consent for the assessments. However, there is no documentation that the team discussed the student absences from school.
7. On June 27, 2018, the CIEP team noted that the student had absent from school since February 2018, and again, recommended updated assessments. The student's parent agreed to provide consent for a psychological assessment, but again, refused consent for a FBA.

### **CONCLUSIONS:**

#### **Allegation #1: Use of Physical Restraint**

Based on the Findings of Facts #1 - #3, the MSDE finds that the PGCPS did not follow proper procedures when the determination was made to utilize physical restraint with the student on February 9, 2018, in accordance with COMAR 13A.08.04. Therefore, this office find that a violation occurred with respect to the allegation.

#### **Allegation #2: HHT Services**

Based on the Findings of Facts #3 and #4, the MSDE finds that the PGCPS followed proper procedures when determining that, in February 2018, the student did not qualify for HHT services, in accordance with COMAR 13A.03.05, 13A.05.01.10, and the *MSDE Technical Assistance Bulletin - Home and Hospital Teaching: Supplement on Students with Disabilities*. Therefore, this office does not find that a violation occurred with respect to the allegation.

#### **Additional Issue: Compulsory School Attendance**

In this case, the complainant asserts that the parent was unable to return the student to school due to her lack of confidence in the appropriateness of the program and placement as a result of the improper use of physical restraint. She alleges that this resulted in a loss of a Free Appropriate Public Education (FAPE) to the student.

Based on the Findings of Facts, the MSDE finds that the parent refused to provide consent for the school system to obtain additional data that would enable the IEP team to ensure that the program and placement was appropriate so that she would be comfortable returning him to school. Therefore, this office does not find that the school system's actions resulted in a loss of a FAPE to the student.

However, based on the Findings of Facts #5 -7, the MSDE finds that there is no documentation that the PGCPS took steps to address compulsory school attendance requirements, in accordance with Maryland law.

**CORRECTIVE ACTIONS/TIMELINES:**

**Student-Specific**

The MSDE requires the PGCPS to provide documentation by October 1, 2018 that the student is attending school or that the PGCPS has taken steps to address the student's lack of attendance.

**School-Based**

The MSDE requires the PGCPS to provide documentation by September 30, 2018, of the steps it has taken to ensure that the XXXXXXXXXXXXXXXXXXXXXXXXXX staff use physical restraint only when necessary to prevent imminent, serious, physical harm.

Further, the MSDE requires the PGCPS to provide documentation by September 30, 2018, of the steps taken to ensure that the XXXXXXXXXXXXXXXXXXXXXXXXXX staff understand their obligation to notify the PGCPS Central Office when a student, who is of compulsory attendance age, stops attending school.

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 violation does not recur.

**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 PGCPS 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 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 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:ac

c:     XXXXXXXXXX  
        Monica Goldson  
        Gwen Mason  
        Trinell Bowman  
        Barbara VanDyke  
        XXXXXXXXXX  
        Dori Wilson  
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