



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

April 17, 2018

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Ms. Susie Fowler
Director of Special Education
St. Mary's County Public Schools
23160 Moakley Street, Suite 105
Leonardtown, Maryland 20650

RE: XXXXX
Reference: #18-097

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 February 20, 2018, the MSDE received a complaint from Mr. XXXXXXXXXXXX and Mrs. XXXXXXXXXXXX, hereafter, “the complainants,” on behalf of their daughter, the above-referenced student. In that correspondence, the complainants alleged that the St. Mary’s County Public Schools (SMCPS) 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 SMCPS did not ensure that proper procedures were followed when seclusion, exclusion, and physical restraint were used with the student between February 20, 2017¹ and March 20, 2017, in accordance with COMAR 13A.08.04.

¹ In the State complaint, the complainants indicated that the violation has occurred since August 2016. They were informed, in writing, that only allegations of violations that occurred within one year of the filing of a State complaint can be addressed through State complaint investigation procedure (34 CFR §300.153).

2. The SMCPS did not follow proper procedures when responding to the request to inspect the student's educational record, in May 2017, in accordance with 34 CFR §300.613.

BACKGROUND:

The student is 11 years old, is identified as a student with an Emotional Disability under the IDEA, and has an IEP that requires the provision of special education instruction and related services.

At the start of the 2016-2017 school year, the student attended XXXXXXXXXXXXXXXXXXXXXXXX XXXX (XXXXX); in April 2017, she was administratively transferred to XXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXX. On February 14, 2018, the student was placed at the XXXXXXXX School, a nonpublic special education school, in XXXXXXXX by SMCPS.

FINDINGS OF FACTS:

1. In its written response, the SMCPS acknowledges that the LMDES staff did not follow proper procedures with regard to the use of physical restraint in a safe and effective manner, when determining whether there was an imminent danger to the student or other person prior to the use of physical restraint, and properly notifying the complainants of its use.
2. The SMCPS also acknowledges that between February 20, 2017 and March 20, 2017, exclusion was used with the student for periods of time that exceeded the maximum time limit of thirty (30) minutes per incident.
3. There is no documentation that seclusion was used with the student between February 20, 2017 and March 20, 2017.
4. There is documentation that the student's mother made multiple requests for copies of documents maintained in the student's educational record, and that the SMCPS staff offered several dates which she could meet with staff to inspect the requested documents.

CONCLUSIONS:

Allegation #1: Use of Restraint, Exclusion, and Seclusion

Based on the Finding of Facts #1 and #2, the MSDE finds that the SMCPS did not follow proper procedures when physical restraint and exclusion were used with the student, in accordance with COMAR 13A.08.04. Therefore, this office finds that a violation occurred with respect to this aspect of the allegation.

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Based on the Finding of Fact #3, the MSDE finds that seclusion was not used with the student, in accordance with COMAR 13A.08.04. Therefore, this office does not find that a violation occurred with respect to this aspect of the allegation.

Allegation #2: Access to the Educational Record

Based on the Finding of Fact #4, the MSDE finds that the complainants have been provided with the opportunity to inspect and review the student's educational record, in accordance with 34 CFR §300.613. Therefore, this office does not find that a violation occurred with respect to the allegation.

CORRECTIVE ACTIONS:

Student-Specific

The MSDE concurs with the SMCPS' proposal to provide compensatory services for the student to address the lack of instructional time incurred as a result of exclusion and physical restraint between February 20, 2017 and March 20, 2017.

Therefore, the MSDE requires the SMCPS to provide documentation by June 15, 2018, that either the parties have agreed to the amount and nature of compensatory services, or that the IEP team has convened to decide on the amount and nature of compensatory services to remediate the violations identified in this Letter of Findings.

School-Based

The MSDE concurs with the SMCPS' proposal to provide professional development for designated SMCPS staff on the State requirements and SMCPS policies and procedures for the proper use of physical restraint, exclusion, seclusion, and trauma-informed care for students. The SMCPS also proposes to provide professional development for LMDES staff on the use of positive behavioral interventions.

Therefore, the MSDE requires the SMCPS to provide documentation by June 15, 2018, of the steps it has taken to ensure that the LMDES staff follow proper procedures with regard to the use of physical restraint, exclusion, seclusion, positive behavioral interventions, and trauma-informed care for students.

The documentation must include a description of how the SMCPS will evaluate the effectiveness of the steps taken and monitor to ensure that the violation do not recur.

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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 complainants and the SMCPS 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.

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 Anita Mandis
 XXXXXXXXXX Albert Chichester
 Dori Wilson Nancy Birenbaum