



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

200 West Baltimore Street • Baltimore, MD 21201 • 410-767-0100 • 410-333-6442 TTY/TDD • msde.maryland.gov

December 7, 2017

Monisha Cherayil, Esq.
Public Justice Center
1 North Charles Street, Suite 200
Baltimore, Maryland 21201

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

RE: XXXXX
Reference: #18-033

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 30, 2017, the MSDE received a complaint from Monisha Cherayil, Esq., hereafter, “the complainant,” on behalf of 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 student.

The MSDE investigated the allegation that the MCPS has not ensured that proper procedures were followed when using physical restraint with the student during the 2017-2018 school year, in accordance with COMAR 13A.08.04.05.

BACKGROUND:

The student is fourteen (14) years old, is identified as a student with an Other Health Impairment under the IDEA related to inattention issues, and has an IEP that requires the provision of special education instruction. He attends XXXXXXXXXXXXXXXXXXXXXXXX.

FINDINGS OF FACTS:

1. On October 5, 2017, physical restraint was used with the student when he re-entered the school after school hours. The MCPS acknowledges that the school personnel involved did not have current certification of training in the proper use of restraint. The school system also acknowledges that there is no documentation that the use of physical restraint was necessary to protect someone from imminent, serious, physical harm after appropriate less intrusive, nonphysical interventions failed or were determined to be inappropriate. The school system further acknowledges that prone restraint was used, which is prohibited, and that the school staff did not properly document the incident.
2. The IEP in effect at the time of the incident states that the student demonstrates inattention and defiance, which results in a lack of task initiation and work completion. The IEP does not indicate that the student requires crisis intervention services.
3. On October 16, 2017, the IEP team convened and discussed that the student was demonstrating new aggressive behaviors and using inappropriate language. The team recommended that a Functional Behavioral Assessment (FBA) be conducted and that Behavior Intervention Plan (BIP) and a de-escalation plan be developed in consultation with the student.
4. The MCPS proposes to ensure that the school staff are properly trained in the use of restraint, and report that training is scheduled for the school staff involved in the incident for December 12 and 14, 2017. The school system also proposes requiring the XXXXX XXXXXXXXXXXXXXXXXXXX staff to submit a debriefing document to the MCPS Central Office staff for review for each use of a physical intervention with a student at the school for the remainder of the 2017-2018 school year in order to monitor the effectiveness of the training.
5. A review of the MCPS Regulation, entitled *Classroom Management and Student Behavior Interventions*, reflects that the school system's procedures for the use of behavioral interventions is consistent with Maryland regulations.
6. There is no documentation that the student's ability to benefit from his education program was negatively impacted by the incident.

CONCLUSIONS:

In this case, the complainant alleges the following:

- a. That physical restraint was used on October 5, 2017 without there being an emergency situation in which it was necessary to protect the student or others from imminent, serious, physical harm after less intrusive, nonphysical interventions failed; and
- b. That physical restraint was not used in a humane, safe, and effective manner.

Based on the Findings of Facts #1 - #3, the MSDE finds that the MCPS ensured that the IEP team convened to consider a FBA and BIP following the incident, in accordance with COMAR 13A.08.04.05. In addition, based on the Finding of Fact #5, the MSDE finds that the school system's procedures for the use of behavior interventions are consistent with Maryland regulations.

However, based on the Findings of Facts #1, #2, and #4, the MSDE concurs with the MCPS' findings and concludes that a violation occurred with respect to the use and documentation of physical restraint. We appreciate the school system's responsiveness and cooperation in this matter.

Notwithstanding the violation, based on the Finding of Fact #6, the MSDE finds that the violation did not negatively impact the student's ability to benefit from his education program. Therefore, no student-specific corrective action is required.

CORRECTIVE ACTIONS/TIMELINES:

The MSDE requires the MCPS to provide documentation by February 1, 2018 that the school staff involved in the incident have received training in the appropriate use and documentation of physical restraint.

The MSDE requires the MCPS to provide documentation by the start of the 2018-2019 school year of the results of the steps taken to monitor the effectiveness of the training and use of physical interventions.

Documentation of all corrective actions taken is to be submitted to this office to the attention of the Chief of the 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.

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Please be advised that both the student's parents 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 be accompanied by a substantial reason why it was not provided 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 student's parents 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:am

c: XXXXXXXXXX
 XXXXXXXXXX
 Jack R. Smith
 Kevin E. Lowndes
 Tracee Hackett
 XXXXXXXXXX
 Dori Wilson
 Anita Mandis
 Nancy Birenbaum