



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

---

July 26, 2018

XXX  
XXX  
XXX  
XXX

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

RE: XXXXX  
Reference: #18-173

Dear Parties:

The Maryland State Department of Education (MSDE), Division of Special Education/Early Intervention Services (DSE/EIS), 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 Mr. XXXXX and Mrs. XXXXXXXXXXX, hereafter “the complainants,” on behalf of the above-referenced student. In that correspondence, the complainants 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 following allegations:

1. The MCPS did not ensure that proper procedures were followed when using physical restraint with the student, from May 30, 2017 to April 17, 2018, in accordance with COMAR 13A.08.04; and
2. The MCPS has not ensured that the student’s Individualized Education Program (IEP) addresses his behavioral needs, since May 30, 2017, in accordance with 34 CFR §§300.101, .320 and .324.

**BACKGROUND:**

The student is eight (8) years old and is identified as a student with Multiple Disabilities under the IDEA including an Intellectual Disability, Speech Language Impairment, and a Visual Impairment. The student has an IEP that requires the provision of special education and related services and attends XXXXXXXXXXXXXXXXXXXX (XXXXXXXXXXXX).

**ALLEGATION #1                      PROPER PROCEDURES WHEN USING PHYSICAL  
RESTRAINT FROM MAY 30, 2017 TO APRIL 17, 2018**

**FINDINGS OF FACTS:**

1. The correspondence from the MCPS dated June 29, 2018 states that “it has been confirmed that [the student] was placed in a Rifton Activity Chair with the use of the attached seatbelt and that such use was not for the purpose of stabilization in accordance with a licensed medical professional or his related service providers.” As a result, the school system acknowledges that “the student was inappropriately restrained through the use of a mechanical restraint.”
2. Subsequent to the inappropriate use of physical restraint with the student, MCPS staff provided technical assistance to the XXXXXXXXXX ES staff in May 2018 and June 2018 on the use of physical restraint.

**CONCLUSION:**

Based on the Findings of Facts #1 and #2, the MSDE concurs with the MCPS’s acknowledgement and finds that a violation occurred with respect to the allegation. The MSDE appreciates the responsive steps taken by the MCPS.

**ALLEGATION #2                      ADDRESSING THE STUDENT’S BEHAVIORAL NEEDS  
SINCE MAY 30, 2017**

**FINDINGS OF FACTS:**

3. The IEP in effect at the start of the investigation period was developed on April 20, 2017 and amended on May 23, 2017.
4. The IEP documents that the student’s behavior is “very inconsistent,” and that “at times he is happy, compliant, cooperative, attentive and participates in instruction as expected of him. Other times he is yelling/screaming/crying and disrupts the class to the point he needs to be removed. He may have a temper tantrum where he stomps his feet, bangs his forehead on the table, knocks over furniture that is nearby and/or bangs his hands on himself or a table.”

XXX

XXX

Mr. Philip Lunch

July 26, 2018

Page 3

5. The IEP documents that the student has “significant interfering behaviors” including verbal outbursts and temper tantrums. It also documents that the student engages in behaviors that are self-stimulating that include poking his eyes, banging his head, and pounding his chin, and that he continues to struggle with “plopping, dropping, hitting himself, and refusals to walk up and down stairs.”
6. The IEP did not require the use of crisis intervention supports.
7. The IEP requires supplementary supports that include daily encouragement and reinforcement of appropriate behavior in all settings, frequent reminders of rules, sensory diet, use of positive/concrete reinforcers, and encouragement to ask for assistance when needed.
8. The IEP includes one (1) behavioral goal that addresses social interaction skills. It states that “given a small, structured classroom with positive reinforcement and tangible rewards, [the student] will increase appropriate classroom and social behavior.” The objectives within the goal focus on the student’s need to use appropriate volume throughout the school day, increase participation in all activities without resistance, increase play with a variety of toys, and walking without dropping in the hallways.
9. The IEP states that the behavior goal is to be evaluated using informal procedures and observation record, and that mastery of the goal is achieved based on an “increase from baseline.”
10. The IEP states that the student “needs close adult supervision at all times” and needs a small, structured classroom with a low student-to-teacher ratio.
11. The IEP requires twenty-one and one-half (21.5) hours per week of specialized instruction in a separate special education classroom, and documents that the student’s placement is in a School Community-Based Program. According to the school system’s website, School Community-Based Program services “are designed for students with severe or profound intellectual disabilities and/or multiple disabilities. School Community-Based Program services include the following components: age-appropriate classes, heterogeneous groups, peer interactions, individualized instruction, community instruction and transition.”
12. In January 2018, the school staff documented that the student’s “overall gains are slow due to his limiting behaviors of dropping to the ground and stimulating himself with hitting head and chin and poking his eyes. These behaviors continue to interfere with his progress due to the frequency of these behaviors. We are continually working to limit these behaviors with positive reinforcements and verbal reminders.”
13. On February 28, 2018, an IEP team meeting was scheduled at the complainants’ request. There is documentation that the complainants requested that the meeting be rescheduled at a time when their advocate would also be available to attend.

XXX

XXX

Mr. Philip Lunch

July 26, 2018

Page 4

14. On February 28, 2018, the school staff rescheduled the IEP meeting for April 5, 2018.
15. On April 5, 2018, the IEP team convened to conduct the annual review of the student's education program and to address the complainants' concerns. The IEP team discussed that the complainants were not provided with a draft of the proposed IEP goals and objectives intended for discussion at the meeting prior to the meeting.
16. At the complainants' request, the IEP team conducted reevaluation planning at the April 5, 2018 meeting. The IEP in effect at that time documents that the most recent reevaluation was conducted on February 13, 2015. However, the IEP developed as a result of the April 5, 2018 IEP team meeting states that the last reevaluation occurred in May 2017.
17. While there is no documentation of a reevaluation being conducted in May 2017, there is documentation that the last reevaluation was conducted on April 20, 2017. There is documentation that, at that time, the complainants shared with the IEP team that the student was diagnosed with "neurological/trauma-based autism," and requested that the student be assessed for needs arising out of this diagnosis. However, the documentation of the reevaluation does not reflect that the team determined whether the student had needs related to this diagnosis.
18. The IEP team reviewed existing data and recommended assessments of the student's cognitive, social, emotional and behavioral, vision, communication, and academic functioning. They also recommended an assessment of the student's functional/adaptive performance and orientation and mobility skills. The complainants provided written consent for the recommended assessments.
19. The Prior Written Notice (PWN) of the decisions made at the April 5, 2018 IEP meeting documents that the IEP team decided to continue the existing IEP, and to reconvene in June 2018.
20. There is no documentation that, at the April 5, 2018 IEP meeting, the IEP team considered positive behavior interventions to address the student's interfering behaviors pending the outcome of the reevaluation.
21. In mid-April 2018, the complainants observed the student being restrained in a Rifton Chair at school. The school system has acknowledged that this was an inappropriate use of a mechanical restraint by the school staff.
22. Following that observation, on May 2, 2018 the complainants requested a transfer for the student to an appropriate placement in another school.
23. On May 4, 2018, the complainants sent an electronic mail (email) message to the school psychologist expressing concern that the student has needs relating to the impact of his "prolonged trauma of institutionalization" in an international orphanage that have been "overlooked" by the IEP team. The complainants noted that the student has been

XXX

XXX

Mr. Philip Lunch

July 26, 2018

Page 5

diagnosed with “numerological based autism (also known as institutional autism or developmental trauma disorder),” and that “it is probably the greatest factor in [his] life and impacts his every moment.”

24. The complainants indicated that there is more information “outlining the specifics” of the student’s trauma included in a report of a private provider, and that it should be located in the student’s educational record. The school psychologist agreed to review the information as part of conducting the psychological assessment of the student.
25. Also on May 4, 2018, the complainants sent an email to the school system staff expressing concern that the student’s profile, as documented in the IEP, does not identify the “many significant behavioral issues” that regularly occur at home and at school. The complainants reported that the behaviors include self-stimulating and self-harmful behaviors, disrobing, fecal smearing, meltdowns and temper tantrums, dropping to the floor, jumping and making sudden and unpredictable movements.
26. The complainants reported that the student is “super strong” and can be difficult to move to safety when the behaviors occur. The complainants expressed their belief that the school staff inappropriately used physical restraint with the student as a way to manage his behavior in the classroom. The complainants also expressed frustration that, while the student’s interfering behaviors are discussed during IEP team meetings, they are not fully reflected in the IEP.
27. In response to the email, the school system staff agreed that most of the behaviors reported by the complainants “are not behavior[s] currently indicated within the IEP.” At the complainants’ request, the school system staff agreed to facilitate a visit to observe and tour the XXXXXXXXXXXXXXXXXXXX (XXXXXX as a possible placement for the student.
28. On June 4 and 7, 2018, the IEP team convened. The complainants expressed concern that the IEP does not document the “regular occurrence” of the student’s interfering behaviors, which include the following:
  - Self-stimulating and harmful behaviors, such as hitting his chin so hard that his teeth have chipped, attempting to “gouge his eyes out,” rubbing his face resulting in a friction burn, banging his head until it bleeds and scratching himself.
  - Disrobing when bored or to avoid tasks.
  - Fecal smearing.
  - Meltdowns and temper tantrums that involve screaming, crying, throwing himself to the ground, scratching, biting, pulling hair that can occur without notice.
  - Dropping to the floor, jumping, sudden and unpredictable movements.

XXX

XXX

Mr. Philip Lunch

July 26, 2018

Page 6

29. The complainants expressed their belief that the student's current placement does not provide him with appropriate supports and resources to address his behavioral, sensory and communication needs, as evidenced by the school staff's "illegal" use of mechanical restraint with the student.
30. The IEP team discussed teacher reports that the student displays unsafe behavior, noncompliant behavior, self-injurious behavior and tantrums every day. The behaviors include dropping, refusals to participate in instruction or follow directions, disrobing, hitting his cane on his chin and eyes and waving it in the air, poking his fingers in his eyes, hitting his chin with his fist, kicking, stomping and screaming.
31. The school staff reported that responses to the student's interfering behavior include adult close proximity, direction to demonstrate a specific behavior, temporary removal of his cane, verbal prompting, redirection to an activity that requires the use of his hands with instructional materials, and temporary removal of his chair.
32. The complainants requested the following:
  - Removal of the student from XXXXXXXXXXXX with placement at XXXXXXXX.
  - A Functional Behavior Assessment (FBA) to identify the cause and triggers of the interfering behaviors, and a Behavioral Intervention Plan (BIP).
  - Development of IEP behavioral goals that address the student's interfering behaviors.
  - Provision of a one-to-one aide to intervene when the student exhibits self-harm and other disruptive behaviors that prevent him from accessing instruction. The aide would also support the student with hand over hand assistance to access educational materials, ensure his safety when walking with his cane, and provide personal care support.
33. The IEP team also reviewed the results of the assessments recommended at the April 2018 IEP meeting. Based on the data, the IEP team determined that the student's primary disability is Multiple Disabilities due to an Intellectual Disability, Speech and Language Disorder, and a Visual Impairment.
34. The IEP was revised to include detailed information about the student's present levels of functioning with respect to unsafe behavior, self-injurious behavior, noncompliant behavior and tantrums. The IEP team added a new behavior goal to the IEP requiring the student manage his impulsive, off task, aggressive and self-injurious behavior, with supports. The IEP team also added another new behavioral goal to the IEP requiring the student to "respond to joint attention by switching his face to face and body positions between the partner and the multi-sensory object presented to complete a variety of classroom based tasks," with supports.

XXX

XXX

Mr. Philip Lunch

July 26, 2018

Page 7

35. Additionally, the IEP team revised the IEP to require the additional accommodations and supplementary supports of extended time, multisensory instruction, and a prompt hierarchy. The team also determined that the student requires daily adult support as a supplementary support, and that the support is required to be provided by an instructional assistant.
36. The IEP team recommended an FBA, and documented that parental consent be obtained at the start of the 2018 - 2019 school year due to the close proximity of the end of the 2017 - 2018 school year.
37. The IEP team discussed possible placements at the School Community-Based Program program at XXXXXXXXXXXX, the XXXXXXXXX and the Maryland School for the Blind (MSB). The school-based members of the IEP team expressed concern about the appropriateness of placements at XXXXXXXXX and MSB to meet the student's needs due to the nature and severity of his disabilities, medical diagnoses and behavioral difficulties.
38. The PWN documents that the IEP team decided to continue the student's current placement at XXXXXXXXX through the end of the 2017 - 2018 school year.
39. The IEP team decided that, for the 2018 - 2019 school year, the student's needs cannot be met at XXXXXXXXX, XXXXXX or MSB and referred the student to the Central Office IEP (CIEP) team to discuss placement recommendations for the 2018 - 2019 school year.
40. On June 19, 2018, the IEP team convened and amended the IEP to include information from a private report of an independent evaluator relating to the student's informal diagnosis of "Institutionalized Autism," as well as additional parental input about the student's history of trauma resulting in "Institutional Autism." The IEP behavioral goals were also revised.
41. There is documentation that the school staff have scheduled a CIEP meeting to convene on July 27, 2018.

### **DISCUSSION/CONCLUSIONS:**

In this case, the complainants allege that the IEP team has not considered the student's "intensive trauma background" when developing the IEP, and that, as a result, the IEP does not include sufficient behavioral supports, which resulted in the inappropriate use of physical restraint to address his behavior.

Based on the Findings of Facts #3 - #33, the MSDE finds that there is no documentation that the IEP team considered additional supports to address the student's interfering behavior until after completing a reevaluation that was conducted in response to concerns that were raised by the complainants about the inappropriate use of physical restraint with the student, in accordance with 34 CFR §300.324. Therefore, this office finds that a violation occurred from January 2018 to June 2018.

XXX  
XXX  
Mr. Philip Lunch  
July 26, 2018  
Page 8

However, based on the Findings of Facts #28 - #41, the MSDE finds that, since June 2018, the IEP team has been obtaining additional data and considering additional behavioral supports and an appropriate educational placement for the student, in accordance with 34 CFR §§300.116, .305, and .324

### **CORRECTIVE ACTIONS/TIMELINE:**

#### **Student-Specific**

The MSDE requires the MCPS to provide documentation, by the start of the 2018 - 2019 school year, that the IEP team has convened and taken the following action:

1. Reviewed and revised the IEP, as appropriate, to ensure that the IEP addresses the student's behavioral needs, based on the data including the results of the FBA recommended in June 2018, and that the IEP documents all behavioral supports that the student requires; and
2. Determined the amount and nature of compensatory services or other remedy to be provided to the student to remediate the violations identified in this Letter of Findings, and developed a plan for the provision of those services within one (1) year of the date of this Letter of Findings.

The MSDE also requires the MCPS to provide documentation, by the start of the 2018 - 2019 school year that the student has a placement that is consistent with the decision of the CIEP team.

#### **School-Based**

The MSDE requires the MCPS to provide documentation by October 1, 2018, of the steps it has taken, including training, to ensure that the XXXXXXXXX staff comply with the IDEA and related State requirements for convening an IEP team meeting to consider positive behavior interventions to address interfering behaviors. and to ensure that reevaluation occurs in a timely manner.

The documentation must include a description of how the MCPS will evaluate the effectiveness of the steps taken and monitor to ensure that the violation does 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.



XXX

XXX

Mr. Philip Lunch

July 26, 2018

Page 9

**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 consistent with the timeline requirement as 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/ksa

c:	Jack Smith	Kevin Lowndes
	Philip A. Lynch	Julie Hall
	Tracee Hackett	XXXXXXX
	Dori Wilson	Anita Mandis
	K. Sabrina Austin	Nancy Birenbaum