



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

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January 4, 2018

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Dr. Susan Austin  
Director of Special Education  
Harford County Public Schools  
102 South Hickory Avenue  
Bel Air, Maryland 21014

RE: XXXXX  
Reference: 19-058

Dear Parties:

The Maryland State Department of Education (MSDE), Division of Early Intervention and Special Education Services, 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 November 7, 2018, the MSDE received a complaint from Ms. XXXXX, XXXXXXXXXXXXX, hereafter “the complainant,” on behalf of the above-referenced student. In that correspondence, the complainant alleged that the Harford County Public Schools (HCPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to the student.

The MSDE investigated the following allegations:

1. The HCPS did not ensure that proper procedures were followed when using physical restraint with the student, on September 13, 2018, in accordance with COMAR 13A.08.04.
2. The HCPS has not ensured that the student has been provided with the counseling services required by the Individualized Education Program (IEP), since the start of the 2018 – 2019 school year, in accordance with 34 CFR §§300.101 and .323.

3. The HCPS has not ensured that the student's Behavior Intervention Plan (BIP) has been implemented, as required by the IEP, since the start of the 2018 – 2019 school year, in accordance with 34 CFR §§300.101 and .323.

**BACKGROUND:**

The student is sixteen (16) 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 and related services. She is in the tenth (10th) grade and attends XXXXXXXXXXXXXXXXXXXX.

**ALLEGATION #1                      USE OF PHYSICAL RESTRAINT**

**FINDINGS OF FACTS:**

1. The complainant reports that, on September 13, 2018, the school staff used physical restraint with the student during an inappropriate interaction between the student and another peer in the classroom.
2. The school staff completed a Behavior Report dated September 13, 2018, which documents the student's inappropriate behavior and the interaction between the school staff and the student during the classroom disruption on that date. The Behavior Report reflects that the school staff physically placed herself between the student and a peer in order to prevent escalation of the behavior incident. It further indicates that after "many" requests by the school staff, the student walked towards the door and moved into the hallway. The Behavior Report does not reflect the use of physical restraint with the student during the behavioral incident on September 13, 2018.

**CONCLUSION:**

Based on the Findings of Facts #1 and #2, the MSDE finds that the documentation does not support the allegation, in accordance with COMAR 13A.08.04. Therefore this office does not find a violation.

**ALLEGATION #2    COUNSELING SERVICES**

**FINDINGS OF FACTS:**

3. The IEP documents that the student requires "at least" three (3) thirty (30) minute sessions of counseling services per month "due to deficits in socio-emotional behavior."
4. While there is documentation that the student has received some counseling services since the start of the 2018 - 2019 school year, the documentation reflects that the services were not provided for the specific duration and and at the specific frequency required by the IEP.

**CONCLUSION:**

Based on the Findings of Facts #3 and #4, the MSDE finds that HCPS has not ensured that the student has been provided with the amount of counseling services required by the IEP, in accordance with 34 CFR §§300.101 and .323. Therefore, this office finds that a violation occurred.

**ALLEGATION #3                      IMPLEMENTATION OF THE BIP**

**FINDINGS OF FACTS:**

5. The IEP documents that the student requires a BIP due to her “history of problem behaviors such as elopement, verbal and physical classroom distractions, and noncompliance.”
6. The BIP in effect since the start of the 2018 - 2019 school year was developed on May 1, 2018. The BIP identifies the following three (3) target behaviors: engaging in noncompliance, characterized by work refusal, refusal to comply with directions and disrespect towards adults; classroom disruptions, characterized by calling out, arguing with staff/peers, talking out of turn, throwing objects, making noises; and leaving the classroom and assigned area.
7. The BIP requires that the student be provided with supports, including direct instruction in deescalation techniques, coping strategies, “emotion management” and conflict resolution, direct instruction in school rules and expectations, and instruction in how to appropriately express emotions, needs and feelings. The BIP also requires choices for tasks, preview of assignments, instruction in use of coping strategies, use of “first, then” statements, progressive consequences, daily check-in/check-out sheets, daily point sheet with incentive plan, verbal redirections, competitive approval, guided choice making, seating near peers who will model positive behaviors, change in seating location away from peers, and frequent breaks.
8. There is no documentation that the student’s teachers have been provided with a copy of the BIP since the start of the school year.
9. There is documentation that, on December 5, 2018, the student’s teachers were provided with a tracking sheet and asked to record whether the student engaged in the BIP target behaviors for each day that the student attends class. However, there is no documentation that the supports required by the BIP have been provided to the student since the start of the 2018 - 2019 school year.

**CONCLUSION:**

Based on the Findings of Facts #5 - #9, the MSDE finds that the HCPS has not ensured that the BIP has been implemented since the start of the 2018 - 2019 school year, in accordance with 34 CFR §§300.101 and .323. Therefore, this office finds that a violation occurred.

**CORRECTIVE ACTION/TIMELINES:**

**Student-Specific**

The MSDE requires the HCPS to provide documentation by February 1 2019, that each of the student's teachers and related service providers have been provided with a copy of the BIP, and informed them of their responsibilities related to implementing the BIP and the specific supports that are required to be provided to the student in accordance with the BIP.

The MSDE further requires the HCPS to provide documentation, by March 1, 2019, that the IEP team has convened and determined the amount and nature of compensatory services or other remedy to redress the violations and develop a plan for the provision of those services within one (1) year of the date of this Letter of Findings.

The MSDE also requires that the HCPS provide documentation by April 1, 2019, that the student is consistently receiving the amount and frequency of counseling services required by the IEP.

**School-Based**

The MSDE requires the HCPS to provide documentation by March 1, 2019, of the steps it has taken, including training, to ensure that the XXXXXXXXXXXXXXXX staff ensure that IEP services and supports are being provided.

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 violations do not reoccur. Documentation of all corrective action taken is to be submitted to this office to: Attention: Chief, Family Support and Dispute Resolution Branch, Division of Early Intervention and Special Education Services, MSDE.

**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.

As of the date of this correspondence, this Letter of Findings is considered final. This office will not reconsider the conclusions reached in this Letter of Findings unless new, previously unavailable documentation is submitted and received by this office within fifteen (15) days of the date of this correspondence. The new documentation must support a written request for reconsideration, and the written request must include a compelling reason for why the documentation was not made available during the investigation. Pending this office's decision on a request for reconsideration, the public agency must implement any corrective actions within the timelines reported in this Letter of Findings.

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The parents 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 Early Intervention  
and Special Education Services

MEF/ksa

c:     XXXXX  
       Sean Bulson  
       Colleen Sasdelli  
       XXXXX  
       Dori Wilson  
       Anita Mandis  
       K. Sabrina Austin  
       Nancy Birenbaum