



January 22, 2014

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Mrs. Joan Rothgeb  
Director of Special Education  
Prince George's County Public Schools  
John Carroll Elementary School  
1400 Nalley Terrace  
Landover, Maryland 20785

RE: XXXXXXXXXXXX and  
Similarly Situated Students  
Reference: #14-043

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.

**ALLEGATION:**

On November 26, 2013, the MSDE received a complaint from Mr. XXXXXXXXX and Mrs. XXXXXXXXX, hereafter, “the complainants,” on behalf of their son and other children in their son’s preschool class. In that correspondence, the complainants 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-named student.

The MSDE investigated the allegation that that the PGCPS has used mechanical restraint with the above-named child and other children in his preschool class from November 26, 2012<sup>1</sup> to the end of the 2012-2013 school year, in accordance with COMAR 13A.08.04.02, .03, and .05.

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<sup>1</sup> During a telephone interview with the student’s mother, she clarified that, despite the fact that her son did not begin participating in the program until January 28, 2013, the allegation covered the entire 2012-2013 school year. This was based on her assertions that she not only observed the use of mechanical restraint with her son, but that she observed the regular use of mechanical restraint with other students in her son’s class who participated in the program for the entire school year. At that time, it was explained that the State complaint investigation time period could extend as far back as a year from the date the complaint was received, in accordance with 34 CFR §300.153(c). Therefore, the time period for the allegation was identified as November 26, 2012 to the end of the 2012-2013 school year.

**INVESTIGATIVE PROCEDURES:**

1. Ms. Christine Hartman, Education Program Specialist, MSDE, was assigned to investigate the complaint.
2. On December 2, 2013, the MSDE sent a copy of the complaint, via facsimile, to Mrs. Joan Rothgeb, Director of Special Education, PGCPs; Ms. LaRhonda Owens, Supervisor of Compliance, PGCPs; and Ms. Kerry Morrison, Special Education Instructional Specialist, PGCPs.
3. On December 27, 2013, Ms. Hartman conducted a telephone interview with the student's mother about the allegation being investigated.
4. On December 27, 2013, and January 6, 13, and 16, 2014, the MSDE requested information from the PGCPs, via electronic mail (email).
5. On December 30, 2013, the MSDE sent correspondence to the complainants that identified the allegation subject to this investigation. On the same date, the MSDE notified the PGCPs of the allegation and requested that the PGCPs review the alleged violation.
6. On December 30, 2013 and January 3, 2014, the MSDE received documentation from the student's mother, via email.
7. On January 13, 2014, Ms. Hartman and Mrs. Martha J. Arthur, Education Program Specialist, MSDE, conducted a site visit at XXXXXXXXXXXXXXXXXXXXXXXXXXXX XXXXXXXXXX to review the student's educational record, and interviewed the following school staff:
  - a. Ms. XXXXXXXXX, Principal;
  - b. Ms. XXXXXXXXX, Special Education Instructor;
  - c. Dr. XXXXXXXXX, Early Childhood Center Special Education Coordinator and Instructional Specialist; and
  - d. Ms. XXXXXXXXX, Paraprofessional Educator.

Ms. Morrison attended the site visit as a representative of the PGCPs and to provide information on the PGCPs policies and procedures, as needed.

8. On January 15 and 16, 2014, the PGCPs provided the MSDE with information and documentation, via email.

9. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
  - a. Correspondence and attachments from the complainants to the MSDE, received on November 26, 2013;
  - b. Individualized Education Program (IEP), dated January 14, 2013;
  - c. Email correspondence from the PGCPS to the MSDE, dated January 16, 2014;
  - d. Audio recordings of the March 20, 2013 and April 26, 2013 IEP team meetings;
  - e. Student Enrollment Log at the XXXXXXXXXXXXXXXXXXXXXXXXXXXX for the 2012-2013 school year; and
  - f. Rifton toddler chair<sup>2</sup> Product Manual.

### **BACKGROUND:**

The named student is four (4) years old and is identified as a student with a Development Delay under the IDEA. He currently attends XXXXXXXXXXXXXXXXXXXXXXXXXXXX, where he receives special education and related services.

From January 28, 2013 to March 27, 2013, the student attended XXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXXXXXXXXXX (XXXXXX). The complainants discontinued sending him to the XXXXX after March 27, 2013 due to concerns about his safety.

During the period of time addressed by this investigation, the complainants participated in the education decision-making process and were provided with written notice of the procedural safeguards (Docs. a-e).

### **FINDINGS OF FACTS:**

1. From January 28, 2013 to March 27, 2013, the named student participated in a preschool program at XXXXXX, following the development of his initial IEP on January 14, 2013. There were four (4) other students in the student's class and two (2) adult school staff members assigned to the class (Docs. b, c, and e, and interviews with the PGCPS staff and the student's mother).
2. There is no documentation that the IEP team for the named student determined that the student required the use of a positioning device (Doc. d and interviews with the PGCPS staff and the student's mother).

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<sup>2</sup> The Rifton Product Manual describes its toddler chair as a secure seat that is used to assist with playing and learning and helps build muscles by encouraging normal sitting posture, which is aided by hip straps and its "highly adjustable design." The Product Manual states that a qualified professional must assess the appropriateness and safety of the product's use for each user and that adult supervision is required at all times during its use. The Product Manual further indicates that the use of straps, trays, or supports with the chair to restrict a child's movement is considered a "behavioral restraint" (Doc. f).

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3. On April 26, 2013, the complainants met with the school staff and expressed concerns that they had observed the student in the classroom in a Rifton toddler chair,<sup>2</sup> and that they considered this the improper use of mechanical restraint with the student. A review of the audio recording of that meeting documents that, at one point, a member of the school system staff indicated that the student was seated in the chair in order to assist him with maintaining attention. Based on the complainants' request, the school system staff agreed to not use the Rifton toddler chair<sup>2</sup> with the student in the future (Doc. d).
4. A review of the audio recording of the April 26, 2013 IEP team meeting also indicates that, later in the meeting, the complainants insisted upon having a written report of the use of the Rifton toddler chair<sup>2</sup> with the student. In response, the school staff indicated that there was no reason to develop a written report because the student climbed into the chair himself and that he was holding the tray attachment in his lap when the complainants observed him in the chair (Doc. d).
5. At the April 26, 2013 meeting, the complainants also reported having observed another student in the named student's class being "forced into the chair" by two (2) school staff members on "an almost daily basis" throughout the time their son had been attending school at XXXXXX. A review of the audio recording of the meeting reflects that the school staff did not respond to this information, and a review of the other student's IEP reflects that there is no indication that the use of a positioning device was to be used with the student (Doc d., interview with the student's mother, and review of the IEPs for all the students in the class).
6. At the site visit conducted by the MSDE as part of this State complaint investigation, the school staff reported that Rifton toddler chairs<sup>2</sup> are used as regular seating in the classroom, without the use of straps and trays, due to the lack of other furniture in the room, and that this was the reason the named student was observed in the chair (Interviews with the PGCPS staff).
7. The school staff further reported that another student in the named student's class required the use of the Rifton toddler chair<sup>2</sup> as a positioning device. However, this student's IEP does not reflect that the use of a positioning device is to be used with the student (Interviews with the PGCPS staff and review of the IEPs for all the students in the class).
8. There is no documentation of how the chair was used with any of the students in the class or that its use was prescribed by a health professional for any of the students (Interviews with the PGCPS staff and review of the IEPs for all the students in the class).

### **DISCUSSION/CONCLUSIONS:**

Maryland does not permit the use of mechanical restraint on students in public or private schools. A mechanical restraint is defined as any device or material attached to or adjacent to a student's body that restricts freedom of movement or normal access to any portion of the student's body

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and which the student cannot easily remove. Mechanical restraint does not include a protective or stabilizing device (COMAR 13A.08.04.02 and 13A.08.04.05).

The use of a protective or stabilizing device is permitted if it is prescribed by a health professional or, for a student with a disability, if it is used in accordance with the student's IEP or Behavior Intervention Plan. A protective or stabilizing device is defined as any device or material attached to or adjacent to the student's body that restricts freedom of movement or normal access to any portion of the student's body for the purpose of enhancing functional skills, preventing self-injurious behavior, or ensuring safe positioning. A protective or stabilizing device includes adaptive equipment prescribed by a health professional, if used for the purpose for which the device is intended by the manufacturer; seat belts; or other safety equipment to secure students during transportation, in accordance with a transportation plan (COMAR 13A.08.04.02 and 13A.08.04.05).

In September 2012, the MSDE issued a technical assistance bulletin which clarifies that the use of any device, including a Rifton chair,<sup>2</sup> to prevent a student from moving all or any part of his or her body for any reason "other than that prescribed by a health professional is a mechanical restraint and is prohibited" (MSDE's *Technical Assistance Bulletin #18*, dated September 2012).

In this case, the complainants allege that they observed their son being restrained in a Rifton toddler chair<sup>2</sup> and were not provided with an incident report concerning the reason for which it was used and manner in which it was used. The complainants further allege that, throughout the time period that their son attended XXXXX, they observed another student in the class being restrained in the same chair on an almost daily basis, requiring two (2) adults to forcibly place her in the device (Doc. a and interview with the student's mother).

Based on the Finding of Fact #7, the MSDE finds that, while the PGCPS has acknowledged utilizing the Rifton toddler chair<sup>2</sup> for one of the student's in the class, there is no documentation that the use of the chair was in accordance with the student's IEP or as prescribed by a health professional. Further, based on the Findings of Facts #1 - #8, the MSDE finds that there is no documentation that the PGCPS has utilized the Rifton toddler chair<sup>2</sup> in accordance with the requirements. Therefore, the MSDE finds that a violation has occurred.

#### **CORRECTIVE ACTION/TIMELINE:**

The MSDE requires the PGCPS to provide documentation by May 1, 2014, of the steps it has taken to ensure that the staff at XXXXX utilize the XXXXXXXXXXXX only as prescribed by a health professional and in accordance with a student's IEP.

Documentation of the corrective action 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.

The findings in the Letter of Findings will be shared with the MSDE's Policy and Accountability Branch for its consideration during present or future monitoring of PGCPS.

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**TECHNICAL ASSISTANCE:**

Technical assistance is available to the complainant and the PGCPS by Mrs. Martha J. Arthur, Education Program Specialist, MSDE. Mrs. Arthur may be contacted at (410) 767-0255.

Please be advised that both the complainants 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 the corrective action consistent with the timeline requirement as reported in this Letter of Findings.

Questions regarding the findings, conclusions and corrective action contained in this letter should be addressed to this office in writing. The complainants 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 for the named 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/ch

cc: Kevin W. Maxwell  
XXXXXXXXXXXXXXXXX  
Duane Arbogast  
Gail Viens  
LaRhonda Owens  
Kerry Morrison

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Dori Wilson  
Anita Mandis  
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