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State Superintendent of Schools

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January 29, 2015

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Mrs. Joan Rothgeb
Director of Special Education
Prince Georges County Public Schools
1400 Nalley Terrace
Landover, Maryland 20785

RE: XXXXX
Reference: #15-031

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 December 1, 2014, the MSDE received a completed complaint from Ms. XXXXXXXXX, hereafter, “the complainant,” on behalf of her daughter, the above-referenced student. In that correspondence, the complainant 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 student.

The MSDE investigated the allegations listed below:

1. The PGCPS has not ensured that the Individualized Education Program (IEP) has addressed the student’s transportation and social, emotional, and behavioral needs since December 2013¹, in accordance with 34 CFR §§300.101 and .323; and

¹ The complainant was informed, in writing, that only allegations that occurred no more than one (1) year from the date of the filing of the completed State complaint may be resolved through the complaint investigation procedure (34 CFR § 300.153).

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2. The PGCPs did not ensure that proper procedures were followed when using physical restraint with the student since December 2013, in accordance with COMAR 13A.08.04.

INVESTIGATIVE PROCEDURES:

1. On November 24, 2014, Ms. Anita Mandis, Section Chief, Complaint Investigation Section, MSDE, conducted a telephone interview with the complainant to clarify the allegations to be investigated.
2. On December 2, 2014, the MSDE sent a copy of the complaint, via facsimile, to Ms. Joan Rothgeb, Director of Special Education, PGCPs, Ms. Gail Viens, Deputy General Counsel, PGCPs, and Ms. Kerry Morrison, Compliance Instructional Specialist, PGCPs.
3. On December 5, 2014, the MSDE sent correspondence to the complainant that acknowledged receipt of the complaint and identified the allegations subject to this investigation. On the same date, the MSDE notified the PGCPs of the allegations and requested that the school system review the alleged violations.
4. On December 11 and 12, 2014, Ms. Sharon Floyd, Educational Program Specialist, MSDE, conducted a telephone interview with the complainant regarding the investigation.
5. On December 18, 2014, Ms. Floyd conducted a site visit at XXXXXXXXXXXXXXXX (XXXXXXXXXX) to review the student's educational record, and interviewed the following school staff:
 - a. Mr. Tony Spruill, Transportation Supervisor, PGCPs;
 - b. Dr. XXXXXXXXXXX, Principal, XXXXXXXX;
 - c. Ms. XXXXXXXXXXXXXXXX, Clinical Supervisor, XXXXXXXXXXXXXXXX;
 - d. Ms. XXXXXXXX, Vice President Education Services, XXXXXXXXXXXXXXXX; and
 - e. Ms. XXXXXXXX, School Social Worker, XXXXXXXX.

Ms. Belinda Gant, Instructional Supervisor, Nonpublic Office, PGCPs, attended the site visit as a representative of the PGCPs and to provide information on the PGCPs policies and procedures, as needed.

6. On December 17, 19, and 22, 2014, the PGCPs provided the MSDE with additional documentation from the student's educational record, via electronic mail.
7. On January 12, 2015, the MSDE requested additional information and documentation from the PGCPs.

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8. On January 25, 2014, the PGCPs provided the MSDE with additional documentation from the student's educational record, via electronic mail.
9. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
 - a. Receipts of the procedural safeguards, signed by the complainant on February 28, 2013, January 13, 2014, and December 16, 2014;
 - b. XXXXXXXXXX Attendants and Bus Drivers Observations;
 - c. Transportation Critical Situation Incident Report, dated June 16, 2014;
 - d. IEP, dated February 28, 2013;
 - e. IEP, dated January 13, 2014;
 - f. IEP, dated December 16, 2014;
 - g. Behavioral Intervention Plan (BIP), dated November 24, 2014;
 - h. Student Behavior Interventions Professional Development, dated August 13, 2014;
 - i. Student Intervention Reports, dated January 2, 2014 through November 10, 2014;
 - j. Consent for treatment and/or evaluation, XXXXXXXXXX, dated August 26, 2013;
 - k. Student attendance, dated August 25, 2014;
 - l. Nonpublic transportation training, dated January 29, 2013, April 10, 2014, and November 18, 2014;
 - m. XXXXXXXXXX Case Consultation Policy;
 - n. PGCPs' transportation procedures;
 - o. Positive Behavior Intervention System Bus Incentive Program;
 - p. Therapeutic behavioral aide training, dated December 18, 2013;
 - q. XXXXXXXXXX Crisis Intervention Training, dated November 19, 2014;
 - r. XXXXXXXXXX Crisis Report Training, dated October 22, 2014;
 - s. Prior written notices dated February 28, 2013, May 13, 2013, October 7, 2013, January 13, 2014, May 5, 2014, November 13, 2014, and December 16, 2014;
 - t. Correspondence and attachments from the complainant to the MSDE, received on December 1, 2014; and
 - u. Behavioral Intervention Plan (BIP), dated April 3, 2012.

BACKGROUND:

The student is ten (10) 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.

Until December 16, 2015, the student attended XXXXXXXXXXXXXXXXXXXX, XXXXXXXX, a nonpublic, separate, special education school, where she was placed by the PGCPs (Docs. d, e, and f). On December 17, 2015, the student began attending XXXXXXXXXXXX XXXXXX, a nonpublic, separate, special education school, where she was placed by the PGCPs.

During the time period covered by this investigation, the complainant participated in the education decision-making process and was provided with written notice of the procedural safeguards (Doc. a).

**ALLEGATION #1: ENSURING THAT THE IEP HAS ADDRESSED THE
STUDENT'S TRANSPORTATION, SOCIAL, EMOTIONAL,
AND BEHAVIORAL NEEDS SINCE DECEMBER 2013**

FINDINGS OF FACTS:

1. The student has a history of behaviors that include verbal and physical aggression towards herself,² peers, and adults, as well as exhibiting impulsivity and defiance (Docs. s and u).
2. The IEP includes goals for the student to improve compliance with directions and to decrease aggressive behavior. It requires the provision of special education and counseling services to assist the student with achieving the goals, as well as a Behavior Intervention Plan (BIP) and crisis intervention services (Docs. d, s and u).
3. Since the start of the 2014-2015 school year the documentation indicates that, the frequency of the student's behaviors has increased (Doc s).
4. On November 13, 2014, the IEP team met and considered information from the complainant that she believes that the increase in the student's behaviors is a result of the student's fear of school after an incident that occurred on the school bus.³ Based on the complainant's input, the IEP team decided to pursue the transfer of the student to a different school, and that in the meantime, the student would be moved to another class, and that the amount of one-to-one support that is provided during the school day would be increased (Doc e).
5. There is documentation that, since the start of the 2014-2015 school year, the complainant has had difficulty getting the student on the bus in the morning and the school staff has had difficulty getting her on the bus after school. Although the student has been moved to a different class while awaiting a transfer to another school, she continues to be assigned to the same bus. While calming techniques are used by school staff to assist the student with getting on the bus in the afternoon, there is no

² The documentation of this behavior includes head banging and propelling herself into walls (Doc i).

³ At the end of the 2013-2014 school year, there was an incident on the school bus involving a physical altercation between the student and another student which resulted in the student's hospitalization. In response, the parties agreed to select an individual who provides one-to-one assistance to the student (Doc i).

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documentation that the IEP team has considered interventions to address the student's behavioral needs with respect to getting on the bus in the morning (Docs. e, g, s).

DISCUSSION/CONCLUSIONS:

In order to provide a student with a Free Appropriate Public Education (FAPE), the public agency must ensure that an IEP is developed that addresses all of the needs that arise out of the student's disability that are identified in the evaluation data. In developing each student's IEP, the public agency must ensure that the IEP team considers the strengths of the student, the concerns of the parents for enhancing the education of the student, the results of the most recent evaluation and the academic, developmental, and functional needs of the student. In the case of a student whose behavior impedes the student's learning or that of others, the team must consider the use of positive behavioral interventions and supports and other strategies, to address that behavior (34 CFR §§300.101, .320 and .324 and COMAR 13A.05.01.06).

The public agency must review the IEP at least annually, to determine whether the annual goals are being achieved. In addition, the IEP team must review and revise the IEP, as appropriate, to address any lack of expected progress toward the annual goals, the results of any reevaluation that is conducted, information about the student provided by the parents, or the student's anticipated needs (34 CFR §300.324).

In this case, the complainant alleges that the student requires transportation to access instruction, and that she is demonstrating behaviors that interfere with her access to this related service in the morning, which has not been addressed by the IEP team (Doc t).

Based on the Findings of Facts #1 and #2, the MSDE finds that, at the start of the school year, the IEP included goals and services to address the student's identified social, emotional, and behavioral needs in the classroom and during transportation. Based on the Findings of Facts #3 - #5, the MSDE further finds that the IEP team has considered the complainant's concerns about the student's escalating behaviors during the school year, and has added supports to address those behaviors in the classroom.

However, based on the Finding of Facts #5, the MSDE finds that the IEP team has not considered how to address the escalation of behaviors that impact the student's access to bus transportation each morning. Therefore, this office finds that a violation occurred with respect to the allegation.

**ALLEGATION #2: ENSURING THAT PROPER PROCEDURES WERE FOLLOWED
WHEN USING PHYSICAL RESTRAINT SINCE DECEMBER 2013**

FINDINGS OF FACTS:

6. Crisis management, including interventions such as the use of physical restraint, is provided by staff at XXXXXXXXXXXX who have been trained in the use of those interventions. XXXXXXXXXXXX staff participated in several training modules including the following:
 - a. *Positive Behavior Intervention Strategies and Supports,*
 - b. *Restraint and Alternatives to Restraint, and*
 - c. *Seclusion* (Docs. e, h, p, q, and r).
7. With the increase of the student's interfering behaviors, there has also been an increase in the use of physical restraint with her during the 2014-2015 school year. There is documentation of each incident of the use of physical restraint with the student during the time frame covered by this complaint. The documentation contains all required information, including a description of how restraint was used with the student. The documentation reflects that physical restraint was used properly with the student. Further, there is no documentation that the student sustained any injuries as a result of the restraint, and the school staff deny that the student sustained injuries as a result of the use of this behavior intervention (Docs. e, h, p, q, and r and interviews with the school staff).

DISCUSSION/CONCLUSIONS:

In this case, the complainant alleges that there has been an increase in the use of physical restraint with the student and that she has observed bruises on the student, which she attributes to the improper use of the physical restraint (Doc t).

The use of physical restraint is prohibited in public agencies and nonpublic schools unless there is an emergency situation and physical restraint is necessary to protect a student or another person from imminent, serious physical harm after other less intrusive, nonphysical interventions have failed, or been determined inappropriate. Physical restraint is also permitted if the student's BIP or IEP describes specific behaviors and circumstances in which physical restraint may be used (COMAR 13A.08.04.05A).

When utilizing physical restraint, school personnel may not place a student in a face-down position. School personnel may not place a student in any other position that will obstruct the student's airway or otherwise impair the student's ability to breathe. School personnel may not place a student in a position that will obstruct a staff member's view of the student's face, restrict the student's ability to communicate distress, or place pressure on the student's head,

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neck, or torso. School personnel may not straddle the student's torso (COMAR 13A.08.04.05A).

Each public agency must provide professional development and training to designated school personnel on the appropriate implementation of the policies and procedures related to the use of restraint. Each school personnel who utilize this behavior intervention must pass a written examination and a physical demonstration of proficiency in the described skills and competencies (COMAR 13A.08.04.06C).

Based on the Finding of Fact #6, the MSDE finds that the school staff who have been involved in the use of physical restraint with the student have received the required training in the proper use of this intervention. Based on the Finding of Fact #7, the MSDE finds that there is no documentation to support the allegation that the student's bruises were caused by the use of physical restraint. Therefore, this office does not find that a violation occurred with respect to this allegation.

CORRECTIVE ACTION/TIMELINE:

The MSDE requires the PGCPs to provide documentation, by March 1, 2015, that the IEP team has met to consider whether the student's behavioral needs when accessing transportation services in the morning have continued since she transferred schools in December 2014. If the team determines that the student continues to require behavioral supports in order to access bus transportation in the morning, the team must determine the interventions required to assist the student.

The PGCPs must ensure that the complainant is provided with written notice of the team's decisions. The complainants maintain the right to request mediation or to file a due process complaint to resolve any disagreement with the team's decisions.

TECHNICAL ASSISTANCE:

Technical assistance is available to the complainant and the PGCPs by Dr. Kathleen Aux, Compliance Specialist, Family Support and Dispute Resolution Branch, MSDE, at (410) 767-0255.

Please be advised that both the complainant 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.

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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 requirements as reported in this Letter of Findings.

Questions regarding the findings, conclusions and corrective actions contained in this letter should be addressed to this office in writing. The complainant 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 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/sf

c: Kevin M. Maxwell
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