



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

April 7, 2017

Ms. Grace Reusing
Assistant Public Defender
Juvenile Protection Division
217 East Redwood Street, Suite 1000
Baltimore, Maryland 21202

Ms. Nancy FitzGerald
Executive Director of Special Education
and Student Services
Howard County Public Schools
10910 Route 108
Ellicott City, Maryland 21042-6198

RE: XXXXX and
Similarly-Situated Students
Reference: #17-098

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 February 6, 2017, the MSDE received a complaint from Ms. Grace Reusing, hereafter, “the complainant,” on behalf of the above-referenced student and similarly-situated students. In that correspondence, the complainant alleged that the Howard County Public Schools (HCPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to the students.

The MSDE investigated the allegation that the HCPS does not ensure that the students transferring from the MSDE Juvenile Services Education (JSE) program are provided with the special education instruction to enable them to be involved in progress in the general curriculum, in accordance with 34 CFR §§300.101, .103, .320, and .323.

INVESTIGATIVE PROCEDURES:

1. On February 6, 2017, the MSDE sent a copy of the complaint, via facsimile, to Ms. Nancy Fitzgerald, Executive Director of Special Education and Student Services, HCPS. On the same date, Ms. Anita Mandis, Section Chief, Complaint Investigation Section, MSDE, conducted a telephone interview with the complainant about the allegation to be investigated.
2. On February 8, 2017, the MSDE sent correspondence to the complainant that acknowledged receipt of the complaint and identified the allegation subject to this investigation. On the same date, the MSDE notified the HCPS of the allegation and requested that the school system staff review the alleged violation.
3. On February 28, 2017, March 17, 2017, and April 6 and 7, 2017, the HCPS provided the MSDE with documents to be considered.
4. On April 4, 2018, Ms. Mandis, Mr. Gerald Loiacono, Education Program Specialist, MSDE, and Ms. Linda Koban, Compliance Specialist, MSDE, conducted a site visit to XXXXXXXXXXXXXXXX to review the student's educational record, and interviewed the following HCPS staff:
 - a. Mr. XXXXXXXX, Coordinator, Digital Education Program;
 - b. Ms. XXXXXXXX, School Counselor;
 - c. Ms. XXXXXXXXXXXX, Principal;
 - d. Ms. XXXXXXXXXXXX, Special Education Instructional Team Leader;
 - e. Ms. XXXXXXXX, Instructional Facilitator for School Counseling; and
 - f. Ms. XXXXXXXXXXXX, Instructional Facilitator.

Ms. Kathy Stump, Instructional Facilitator for Nonpublic Services and Special Education Compliance, HCPS, attended the site visit as a representative of the HCPS and to provide information on the school system's policies and procedures, as needed.

5. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
 - a. Named student's transcripts from XXXXXXXXXXXXX in 2015;
 - b. *HCPS Policy #8020, Grading and Reporting: High School*, dated April 14, 2016;
 - c. *HCPS Policy #8030, Graduation Requirements*, dated July 1, 2016;
 - d. *HCPS Guidelines for Transfer Students Requiring Special Education and Related Services*, undated;
 - e. Named student's transcripts from the Savage Mountain Youth Center;
 - f. HCPS Registration Form, dated November 28, 2016;
 - g. XXXXXXXXXXXXXXXX Student Enrollment Profile form for the 2016-2017 school year;
 - h. Named student's IEP, dated November 30, 2016;

- i. Correspondence between the complainant and the Montgomery County Public Schools staff, dated December 2, 2016;
- j. Correspondence between the complainant and the school staff, dated December 15, 2016 and January 2, 2017;
- k. Written summary of a January 11, 2017 IEP team meeting;
- l. Manifestation Determination Report, dated January 11, 2017;
- m. Correspondence from the school system to the named student's mother, dated January 19, 2017;
- n. Written summary of a February 1, 2017 IEP team meeting;
- o. Correspondence from the complainant containing an allegation of a violation of the IDEA, received by the MSDE on February 6, 2017;
- p. Named student's class schedule; and
- q. Named student's attendance records.

BACKGROUND:

The named student is 17 years old and is identified, under the IDEA, as a student with an Other Health Impairment which is manifested through impulsivity and lack of concentration. He has an IEP that requires the provision of special education and related services (Doc. h).

From August 1, 2016 to November 18, 2016, the named student was placed by the Maryland Department of Juvenile Services (DJS) at XXXXXXXXXXXXXXXXXXXX, where he was provided with instruction by the JSE (Doc. e).

On November 28, 2016, the named student was enrolled in the HCPS after his release back into the community, and on December 2, 2016, he was assigned to XXXXXXXXXXXXXXXXXXXX, the school he would attend if not disabled (Docs. f and g).

On January 24, 2017, the student was transferred to an evening school program located at the XXXXXXXXXXXXXXX as an alternative setting due to a disciplinary removal from school (Docs. k - m).

On March 7, 2017, the student was placed by the HCPS at the XXXXXXXXXXXXXXXXXXXX XXXXXXXX (XXXX) – Baltimore (Doc. q).

During the time period addressed by this investigation, the named student's mother participated in the education decision-making process and was provided with notice of the procedural safeguards (Doc. h).

FINDINGS OF FACTS:

- 1. On November 30, 2016, an IEP team was convened by the HCPS to consider the named student's educational placement in anticipation of his return to the community from the XXXXXXXXXXXXXXXXXXXX. His last placement through the HCPS prior to his placement by the Maryland Department of Juvenile Services at the XXXXXXXXXXXX XXXXXXXX, was in a nonpublic separate special education school. The IEP from the

XXXXXXXXXXXXXXXXXXXX required the provision of special education instruction in both a general and a separate special education classroom. At the November 30, 2016 meeting, the IEP team documented its discussion that the school system staff were concerned that the student may require a change in educational placement back to a separate special education school since being returned to the community because he previously required that level of support in the community. However, based on the student's strong preference to remain at the school he would attend if not disabled, the IEP decided to attempt to implement the IEP in that setting and to return to consider the student's progress in 30 days (Doc. h).

2. When the student enrolled in the HCPS, the complainant provided a transcript from 2015 when the student was enrolled in the Montgomery County Public Schools and attended XXXXXXXXXXXXXXXX. The transcript reflects that the student had earned one-half of a credit in biology and English 9. It also reflects that, while the student was enrolled in other courses, including government and Algebra 1, he did not earn credits in those courses. The school staff report that, based on this document, they placed the student in algebra I, English 10, government, and biology classes at XXXXXXXXXXXXXXXX. They further report that they had a copy of the IEP, but did not seek any other records from the student's previous school (Docs. a, i, and interviews with the school staff and review of the educational record).
3. The *HCPS Guidelines for Transfer Students Requiring Special Education and Related Services* states that to facilitate the transition of a student who transfers into the HCPS, the new school of enrollment must take reasonable steps to promptly obtain the student's records, including the IEP and supporting documents, and any other records relating to the provision of special education or related services from the previous school system in which the student was enrolled [Emphasis added]. It further states that attempts to obtain records must be documented, and indicates that a student must not be denied a Free Appropriate Public Education (FAPE) while waiting for records from the previous public agency (Doc. d).
4. The school staff did not seek additional records, including the student's complete transcript, from the JSE, which operates the school program at the XXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXX, which was the last school he attended before enrolling in the HCPS (Interview with the school staff and review of the educational record).
5. On December 15, 2016, the complainant provided the school counselor with transcripts for the named student from the XXXXXXXXXXXXXXXX, which reflect that the student earned one credit in algebra I, English 10, government, and biology. The complainant requested that "other options" be explored for the student that would allow him to earn credits in courses for which he had not already received credit for the second semester of the 2016- 2017 school year (Doc. j).
6. On December 15, 2016, in response to the complainant's concerns, the school counselor stated that "because we are not a semester based school system there are very minimal options for [the student] to receive credits because of how late in the school year he

joined us.” The school counselor requested that the complainant obtain documentation from the JSE of the student’s scores on biology, government, English 10 and algebra Statewide assessments since the transcripts indicated that he earned credits in those subjects while at the XXXXXXXXXXXXXXXXXXXX. However, the school counselor made no attempts to obtain this information directly from the JSE (Doc. j and interview with the school staff).

7. The *HCPS Policy #8020, Grading and Reporting*, states that when a student transfers into the school system more than seven days after the interim report of the first marking period and before the second marking period interims are issued, and enrolls in a course in which he/she was not enrolled in the previous school, no credit will be granted for the course. The policy states that an exception may be made to this rule if the principal finds that extenuating circumstances exist. The school staff report that requests for consideration by the principal are made by the school counselor when the school staff deem it appropriate (Doc. b).
8. In its December 15, 2016 correspondence to the complainant, the school counselor stated that “it would be a good idea to meet after interim grades are out next week” or “after the winter break because any schedule changes that may occur would not be put into place until after midterm exams in January so we have time to figure this out.” On December 16, 2016, the complainant agreed to meet after the winter break in order to have the assessment results when considering options for the student (Doc. j).
9. The school staff report that they did not believe it appropriate to request that the principal consider permitting the student to change his schedule, which is why the school counselor did not believe that it was urgent to discuss options with the complainant prior to the end of the second marking period interims (Interview with the school staff).
10. The *HCPS Policy #8030, Graduation Requirements*, states that upon transfer of a student into the school system, the principal will ascertain whether or not the school or schools previously attended by the student are accredited. If the schools are accredited by the State, credits may be awarded to the student in the subjects that the student has completed. It further states that, to award credit for algebra, biology, English 10, and government, a principal will determine through the following considerations whether the transfer student demonstrates subject matter knowledge aligned with the content standards for the subject: administration of standardized tests, observation of the student in the classroom, use of interviews that are focused around the student’s demonstration of course content knowledge and performance levels, and inspection of transcripts, report cards, and other documentation (Doc. c).
11. The school staff report that additional data to demonstrate whether a transfer student demonstrates subject matter knowledge in core courses is only required when it is unclear whether the courses earned in another school system meet the required content standards. They further report that in this case, the additional documentation was requested because there was confusion about whether the student had earned the required credits in core courses (Interview with the school system staff).

12. On January 2, 2017, the school counselor contacted the complainant to determine whether she had obtained the data regarding assessments and was available to meet. On the same date, the complainant informed the school staff that she had not yet obtained the information (Doc. j).
13. On January 11, 2017, the IEP team met and determined that behavior exhibited by the named student during a school sporting event on the evening of January 4, 2017, which resulted in a disciplinary removal from school, was not a manifestation of the student's disability. The student was assigned to an alternative educational setting (evening school) beginning on January 24, 2017 (Doc. k).
14. On February 1, 2017, the IEP team convened to consider the named student's progress. At the meeting, the student's teacher reported that the student "needed a lot of supervision to complete assignments" and that he "preferred to have an adult setting next to him when completing classwork." The teacher also reported that the student was not attending school regularly and failed all of his classes except for his government class. The complainant reported that the student was frustrated because he was being required to take classes in courses for which he had already earned credit. The IEP team determined that the least restrictive environment in which the IEP can be implemented is a separate special education school due to the student's need for a small class setting with embedded therapeutic supports (Doc. h).
15. On March 7, 2017, the HCPS placed the student at XXXX – Baltimore, a nonpublic separate special education school, where he is enrolled in core courses for which he had not previously earned credit, including algebra 2, world history, English 11, and environmental science. However, the student's school attendance continues to be inconsistent (Docs. p and q).

DISCUSSION/CONCLUSIONS:

The IDEA requires that a Free Appropriate Public Education (FAPE) be provided to students with disabilities through an IEP that meets the needs that result from the disability and enable them to be involved in and make progress in the general curriculum. Therefore, each local education agency must provide student with access to instruction to allow them to achieve credit requirements and assessments necessary to progress towards the standards for graduation from a public high school in Maryland and prepare students to successfully obtain a Maryland High School Diploma by examination (34 CFR §§300.101, .103, .320, and .323).

To be awarded a Maryland High School Diploma, a student must have earned a minimum of 21 credits, including core credits in English, fine arts, mathematics, physical education, science, social studies, and technology education. Core credits must also be earned in world language or American Sign Language, advanced technology education, or a career and technology program (COMAR 13A.03.02.03). In addition to earning credits during the regular school day and year, credits may be earned, at the discretion of the local public agency, through means including online courses (COMAR 13A.03.02.04).

Ms. Grace Reusing
Ms. Nancy FitzGerald
April 7, 2017
Page 7

Student records provide information about a student's academic and functional performance. Therefore, the proper maintenance of these records is necessary to ensure that accurate information is available to plan for a student's education. The IDEA requires that all student educational records are be maintained in accordance with the Family Educational Rights and Privacy Act (FERPA) (34 CFR §§300.610 - .627).

In order to ensure proper student records management, the local public agencies in Maryland are required to maintain educational records consistent with the Maryland Student Records System Manual (COMAR 13A.08.02.01 and .02). The Maryland Student Records System Manual requires that records, including those related to graduation credits earned, service learning hours, and assessment data, be maintained in the educational record (*Maryland Student Records System Manual*, 2016). Each local public agency must also develop a written policy on grading and reporting that complies with the student record requirements in COMAR 13A.08.02, which requires the local public agency to ensure the proper maintenance of records (COMAR 13A.03.02.08 and 13A.08.02).

The IDEA requires public agencies to ensure a continuum of placements and to offer a full range of services to meet the needs of students with disabilities. It does not permit public agencies to make decisions for students with disabilities based on the public agency's needs or available resources, including budgetary considerations and the ability of the public agency to hire and recruit qualified staff (Analysis of the Comments and Changes, *Federal Register*, Vol. 71, No. 156, August 14, 2006, p.46587).

In this case, the complainant alleges that instruction in all of the core courses is not available to students transferring from DJS facilities after the start of the school year. The complainant asserts that, as a result, some students are provided with instruction in courses for which they have already earned the required credit and are not able to receive instruction in those core courses for which they need to earn credit, which impedes the ability of students to make progress in the general curriculum (Doc. o).

Based on the Findings of Facts #1 - #15 above, the MSDE finds that the HCPS did not take steps to obtain the student's educational record from his previous school, which was necessary in order to ensure that he was placed in classes that would enable him to earn credits to progress through the general curriculum. Therefore, this office finds that a violation occurred with respect to this aspect of the allegation from December 2, 2016 to March 7, 2016.

However, based on those Findings of Facts, the MSDE finds that the HCPS has core courses available to transferring student and a process for providing access to courses in order to earn credit and progress through the general curriculum. Therefore, this office does not find a violation with respect to this aspect of the allegation.

CORRECTIVE ACTIONS/TIMELINE:

Student-Specific

The MSDE requires the HCPS to provide documentation by the end of the 2016-2017 school year that the IEP team has determined the compensatory services to be provided to assist the student with making progress in the courses in which he is currently enrolled and to consider positive behavior interventions to address the student's inconsistent school attendance.

The MSDE also requires the HCPS to provide documentation that the compensatory services have been offered and if accepted, that they have been provided to the student within one year from the date of this Letter of Findings.

School-Based

The MSDE requires the HCPS to provide documentation by the end of the 2016-2017 school year of the steps taken to ensure that the XXXXXXXXXXXXXXXXXXXX staff follow proper procedures to obtain the educational records of students transferring into the HCPS to ensure that they are placed in classes that will enable them to earn credits and to progress through the general curriculum.

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.

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 the HCPS and the complainant have the right to submit additional written documentation to this office within fifteen (15) days of the date of this letter if they disagree with the findings of fact 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 within the timelines 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

Ms. Grace Reusing
Ms. Nancy FitzGerald
April 7, 2017
Page 9

identification, evaluation, placement, or provision of a Free Appropriate Public Education 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 due process.

Sincerely,

Marcella E. Franczkowski, M.S.
Assistant State Superintendent
Division of Special Education/Early Intervention Services

MEF:am

c: Renee A. Foose
Kathy Stump
XXXXXXXX
XXXXXXXX
Dori Wilson
Anita Mandis
Nancy Birenbaum