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State Superintendent of Schools

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RE: [REDACTED] and
Similarly-Situated Students
Reference: #20-088

Dear Parties:

The Maryland State Department of Education, Division of Early Intervention and Special Education Services (MSDE), 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 January 16, 2020, the MSDE received a complaint from Grace Reusing, Esq., Office of the Public Defender, hereafter, “the complainant,” on behalf of the above-referenced student and similarly-situated students. In that correspondence, the complainant alleged that the Baltimore County Public Schools (BCPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to the student.

The MSDE investigated the following allegations:

1. The BCPS has not ensured that the students have been provided with a Free Appropriate Public Education (FAPE) that meets the State’s standards in conformity with an Individualized Education Program (IEP) that includes goals and services to enable them to

progress through the general curriculum while placed at the Baltimore County Detention Center (BCDC) since December 9, 2019, in accordance with 34 CFR §§300.2, .17, .101, .320, .324, Md. Code Ann., Educ. §7-103, and COMAR 13A.05.01.09.

2. The BCPS has not ensured that the students have been provided with the special education instruction and related services in the educational placement required by the IEP since December 9, 2019, in accordance with 34 CFR §§300.101 and .323.
3. The BCPS has not ensured that the students and their parents have the opportunity to participate in IEP team meetings, in accordance with 34 CFR §§300.321 and .322.

BACKGROUND:

The named student is seventeen (17) years old, is identified as a student with an Other Health Impairment under the IDEA related to Attention Deficit Hyperactivity Disorder, and has an IEP that requires the provision of special education and related services.

On December 7, 2019, the named student was placed in the BCDC, and was enrolled in the education program, which is operated by the BCPS, on December 13, 2019.

On January 22, 2020, the named student was placed at the Baltimore City Juvenile Justice Center (BCJJC), where the education program is operated by the MSDE Juvenile Services Education (JSE).

FINDINGS OF FACTS:

General Information

1. The BCDC is a local adult correctional facility operated by the Baltimore County Department of Corrections (BCDOC). When students are placed at the BCDC, the BCDOC requires them to remain in a holding area for four (4) days before being assigned to a housing unit.
2. The BCPS has a written agreement with the BCDOC that requires the BCPS to provide education services in the facility and requires the BCDOC to permit the BCPS to provide the required education services to students in the facility. It requires the BCPS and the BCDOC to work cooperatively to define the procedure for identifying and educating students, selecting and using materials and space for doing so, and conducting ongoing staff training.
3. On January 31, 2019, the MSDE issued a Letter of Findings as a result of the investigation conducted into allegations of violations of the IDEA and related State requirements for another student placed at the BCDC (State complaint #19-080). As a result of that investigation, the MSDE found the following:

- a. The BCPS utilizes a self-paced Blended Learning approach at the BCDC, which is designed to accommodate a large range of personalities and learning styles. It mixes standard face-to-face interactions in the classroom with technology-based communication techniques, creating a learning environment where students engage in deliberate practice, which requires quiet, concentration, repetition, lack of distractions, and regular, individualized feedback that does not necessitate collaboration or group work (the APEX program). While there is text-to-speech capability with the APEX program, teachers need to be available to adapt the content, methodology, or delivery of instruction provided to students who have difficulty with reading in order to ensure that they understand the material. The teacher assigned to social studies and science is certified in both the course content and special education. However, the BCPS does not document collaboration between other general education teachers and a special education teacher on the planning and evaluation of the effectiveness of the instruction provided.
- b. The BCPS currently has access to four (4) classrooms in the BCDC Monday through Friday from 8:30 a.m. to 10:30 a.m., 12:30 p.m. to 2:30 p.m., and 6:00 p.m. to 9:00 p.m. There is sufficient space for nine (9) students and computers in one classroom, eight (8) students and computers in two of the classrooms, and six (6) students and computers in the fourth classroom. This allows for twelve (12) groups of students to be served per day - eight (8) groups of two (2) hour sessions and four (4) groups of three (3) hour sessions.
- c. There are currently thirteen (13) defined groups of students that must be served separately, i.e., one (1) group of adult females, one (1) group of general population female youth, four (4) groups of protective custody male youth, three (3) groups of general population male youth, one (1) group of general population male adults, one (1) group of general population protective custody male adults, and two (2) groups of restricted male adults. Multiples of defined groups are a result of individual students who are required to be kept separated from each other for security purposes.
- d. While preference is given to students with disabilities and those under the age of eighteen to participate in education services, approximately thirty percent (30%) of the population of students are students with disabilities, and there is insufficient room to ensure that each student receives all of the services required by the IEP and the instruction needed to complete courses for graduation. The BCPS has requested additional space and instructional time with the students in order to do so, but this has not been provided.
- e. The students placed at the BCDC are first assigned temporary housing in “general holding.” While in “general holding,” students are not permitted to attend class

until they are assigned housing in a “tier.” While the students are placed in “general holding,” the BCPS staff obtain information from them about previous school attendance and begin the school enrollment process at the facility.

- f. The BCPS has a contractual pupil personnel worker (PPW), who facilitates the identification of students with disabilities and obtainment of the education record for each student upon entry into the BCDC. The students are initially enrolled in classes based upon reports from the students and family members about the classes they were taking in the community until the record is obtained and the information verified.
- g. The BCDOC withholds education services to students as a consequence for behavior such as student refusal to attend class three (3) times, use of profanity or derogatory comments, and demonstration of a lack of significant educational progress. The BCDOC also withholds educational services to students during periods of time when their unit is on “disciplinary segregation” or “lockdown.” The BCPS does not track services missed to ensure that disciplinary protections are provided following the 10th day of withholding of services by the BCDOC and there is no process in place for ensuring that the BCPS can provide all of the protections.
- h. The BCPS ensures that instruction is provided by teachers who are certified in the area of content taught. They currently have four (4) teachers who cover English, math, science, and social studies during the day. One (1) of those teachers is also a special education teacher. In addition, they have two (2) special education teachers who provide instruction in the evening. However, they currently do not have sufficient staffing to ensure that all students who require special education instruction primarily from a special education teacher in a separate special education classroom are provided with these services in this setting. The BCPS is seeking approval to hire additional staff.
- i. There is documentation that the BCPS administers Statewide assessments at the BCDC. The BCPS staff report that all students are included in the administration of Statewide assessments regardless of whether they have been convicted of crimes as adults. However, there is currently no way for the BCPS to ensure that the BCDOC makes each student available, as appropriate, for participation in assessments that are administered at the facility.
- j. There is documentation that the BCPS conducts transition planning at the BCDC. The BCPS staff report that they conduct transition planning for all students with disabilities without regard to whether they will be released after they reach the age when they are no longer eligible to receive special education services. However, the BCPS staff reports that they have been unsuccessful in obtaining

permission from the BCDOC to have student participate in the IEP team meetings where transition planning occurs.

4. As a result of the investigation of State complaint #19-080, the BCPS was required to take system-based corrective action. This action includes the following:
 - a. Steps have been taken to enforce the written agreement with the BCDOC in order to ensure that there is sufficient space and access to students at the BCDC for the school system to provide a FAPE that meets the State's standards to enable students to progress through the general curriculum and achieve IEP goals. This includes ensuring the following:
 - b. Students receive at least 180 school days in a minimum of 1,080 school hours during a ten (1) month period;
 - c. The loss of educational services is not used as a consequence for behavior that does not result in an imminent security risk;
 - d. Students have access to additional hours of instruction needed to make up for the loss of instructional time due to the need to enforce security measures;
 - e. Students are made available to participate in IEP team meetings where transition planning is being conducted;
 - f. Students are made available to participate in Statewide assessments; and
 - g. A procedural manual is developed and implemented to ensure the a FAPE is provided to students at the BCDC that meets the State's standards to enable them to progress through the general curriculum and achieve IEP goals. This includes procedures for ensuring the following:
 - i. That there is sufficient staffing to provide students with special education instruction by the provider and in the placement required by the IEP;
 - ii. That IEP teams consider positive behavioral interventions to address the interfering behaviors of students;
 - iii. That progress reports accurately reflect whether each student is making sufficient progress on the IEP goals to achieve them within one (1) year of the date of their development and that the IEP teams review and revise the IEP, as appropriate, to address lack of expected progress towards achievement of annual goals;

- iv. That IEP teams consider parent concerns and make decisions that are based on student needs and not the service delivery system;
 - v. That each student is provided with the IDEA disciplinary protections when removed from instruction in excess of ten (10) days each school year as a result of behavior of the student or as a result of security measures taken in response to the behavior of any student at the BCDC; and
 - vi. That general and special education teachers collaborate in the delivery of special education instruction in order to ensure that each student is provided with instruction by the teachers required by the IEP and certified in the content area taught.
5. The BCPS is dependent upon the cooperation of the BCDOC to provide appropriate access to students and space for instruction in order to complete the above actions. While the BCPS has made efforts to obtain the cooperation of the BCDOC in order to complete these actions, those efforts have been unsuccessful.
6. The BCPS has held IEP team meetings at the Central Office instead of the BCDC to make it easier for parents to participate. However, students are not permitted to leave the BCDC, and therefore, were unable to participate in meetings held at the Central Office. In response to concerns raised about ensuring student participation in IEP team meetings, the BCPS has also held IEP team meetings at the BCDC. However, the BCDOC does not permit parent participation by alternative means, such as teleconference, when they are unable to participate in person at the facility. Therefore, the BCPS has been unable to ensure that both parents and students can participate in IEP team meetings at the same time.

The Named Student

7. While the named student was placed at the BCDC, he had an IEP that was developed in February 2019 while he was attending a BCPS school in the community.¹ The IEP required that the student be provided with one (1) hour and thirty (30) minutes of special education instruction per month in a general education classroom by a general education teacher for English, science, and social studies. It required that he be provided with one (1) hour and thirty (30) minutes of special education instruction in a separate special education classroom by a special education teacher for math. It also required one (1) hour per year of career and technology education in the general education classroom. It further required several accommodations and supplementary aids and services to assist the student with accessing instruction.

¹ In April 2019, the IEP was revised for the named student to be provided with Home and Hospital Teaching (HHT) services for the remainder of the 2018-2019 school year due to a medical condition that prevented him from attending a school-based program.

8. There is documentation that the named student's educational record, including his transcript, was obtained without delay, and that general and special education teachers were informed of the requirements of the IEP. However, the documentation reflects that the teachers were informed that all services were to be provided in the general education classroom.
9. The named student's transcript reflects that, by the end of the 2018-2019 school year, he had earned credits in English 9, algebra 1, and earth systems. The student's class schedule reflects that, while placed at the BCDC, he was again enrolled in earth systems. He was also enrolled in English 10, geometry, and American government.
10. There is documentation that the named student has participated in Statewide assessments while placed at the BCDC.
11. There is no documentation that the IEP was revised for the named student while he was placed at the BCDC.

DISCUSSION/CONCLUSIONS:

Allegation #1 Provision of a FAPE that Meets the State's Standards

In this case, the complainant alleges that the student receives an average of two (2) hours of instruction per day, and that the BCDOC staff determine whether he is allowed to attend school on any given day.

Based on the Findings of Facts #7 - #10, the MSDE finds that, while the student has had access to special education instruction and assessments at the BCDC, he was not enrolled in a science course that would enable him to progress through the general curriculum, in accordance with 34 CFR §§300.2, .17, .101, .320, .324, Md. Code Ann., Educ. §7-103, and COMAR 13A.05.01.09.

In addition, based on the Findings of Facts #1 - #5 and #9, the MSDE finds that the BCPS does not have sufficient access to students at the BCDC to make sure that they are provided with a FAPE that meets the State's standards and enable them to progress through the general curriculum and achieve annual IEP goals, in accordance with 34 CFR §§300.2, .17, .101, .320, .324, Md. Code Ann., Educ. §7-103, and COMAR 13A.05.01.09. Therefore, this office finds that violations occurred.

Allegation #2 IEP Implementation

Based on the Findings of Facts #7 and #8, the MSDE finds that there is no documentation that the named student was provided with the special education instruction in math in the educational placement required by the IEP while enrolled in the education program at the BCDC from December 13, 2019 to January 22, 2020, in accordance with 34 CFR §§300.101 and .323.

In addition, based on the Findings of Facts #1 - #5, the MSDE finds that there is no documentation that the BCPS can ensure that similarly-situated students with disabilities placed at the BCDC are provided with the amount of special education instruction in the placements required by the IEP at the BCDC, in accordance with 34 CFR §§300.101 and .323. Therefore, this office finds that violations occurred.

Allegation #3 Participation in IEP Team Meetings

Based on the Finding of Fact #11, the MSDE finds that there is no documentation that an IEP team meeting was held for the named student while he was placed at the BCDC.

However, based on the Finding of Fact #6, the MSDE finds that there is no documentation that the BCPS can ensure that both students and their parents are provided with the opportunity to participate in IEP team meetings at the same time, in accordance with 34 CFR §§300.321 and .322. Therefore, this office finds that a violation occurred.

CORRECTIVE ACTIONS/TIMEFRAMES:

The IDEA requires that State complaint procedures include those for effective implementation of the decisions made as a result of a State complaint investigation, including technical assistance activities, negotiations, and corrective actions to achieve compliance (34 CFR §300.152). Accordingly, the MSDE requires the public agency to provide documentation of the completion of the corrective actions listed below.

The MSDE has established a reasonable timeframe below to ensure that noncompliance is corrected in a timely manner.² This office will follow up with the public agency to ensure that it completes the required action consistent with the MSDE Special Education State Complaint Resolution Procedures.

If the public agency anticipates that any of the timeframes below may not be met, or if either party seeks technical assistance, they should contact Dr. Nancy Birenbaum, Compliance Specialist, Family Support and Dispute Resolution Branch, MSDE, to ensure the effective implementation of the action.³ Dr. Birenbaum can be reached at (410) 767-7770.

² The United States Department of Education, Office of Special Education Programs (OSEP) states that the public agency must correct noncompliance in a timely manner, which is as soon as possible, but not later than one (1) year from the date of identification of the noncompliance. The OSEP has indicated that, in some circumstances, providing the remedy could take more than one (1) year to complete. If noncompliance is not corrected in a timely manner, the MSDE is required to provide technical assistance to the public agency, and take tiered enforcement action, involving progressive steps that could result in the redirecting, targeting, or withholding of funds, as appropriate.

³ The MSDE will notify the public agency's Director of Special Education of any corrective action that has not been completed within the established timeframe.

The MSDE requires that the PGCPS provide documentation by the end of the 2019-2020 school year of the steps taken to ensure that the violation does not recur at [REDACTED]

Named Student

The MSDE requires the BCPS to provide documentation by April 1, 2020 that it has contacted the JSE or any other public agency in which the student is placed and requested that an IEP team meeting be convened for the purpose of determining compensatory services or other remedy to be provided or funded by the BCPS.

Similarly-Situated Students/System-Based

The MSDE will be taking enforcement action to ensure the completion of the corrective actions required as a result of the investigation of State complaint #19-080, in accordance with COMAR, in order to ensure the future provision of appropriate services to students with disabilities placed at the BCDC.

Until the BCPS is informed that the corrective action has been completed, it must provide documentation on a monthly basis that it is completing the following:

1. Identify and track all students with disabilities at the BCDC on an ongoing basis;
2. Upon notice of a student's upcoming release from the BCDC, the BCPS must offer assistance with enrollment into another education program for up to one year from the date of the student's release or until the student is no longer eligible for an education program under the IDEA, whichever comes first;
3. If the student is enrolled in another education program, the BCPS must request an IEP team meeting for the student for the purpose of determining the compensatory services or other remedy to be provided to the student by the BCPS in the new education program; and
4. If the student is not entitled to continued education under the IDEA upon release from the BCDC or if the student exceeds compulsory school attendance age and, with parental agreement, chooses not to enroll in another education program, the BCPS must offer to pay for a job training program of the student's choice if the student identifies such a program within one year of the student's release from the BCDC.

Documentation of completion of the 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.

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 timeframes reported in this Letter of Findings.



The parent 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:aam

c:


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