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State Superintendent of Schools

March 10, 2020

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RE: [REDACTED]
Reference: #20-092

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 27, 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. In that correspondence, the complainant alleged that the Baltimore County Public Schools and the Baltimore City Public Schools violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to the student.

The MSDE investigated the following allegations:

1. The Baltimore County Public Schools did not ensure that the student's educational record was transmitted to the Baltimore City Public Schools when the student transferred from the [REDACTED] ([REDACTED]) to the [REDACTED] [REDACTED] in August 2019, in accordance with 34 CFR §300.323, COMAR 13A.08.02, and *The Maryland Student Records Manual*.
2. The Baltimore City Public Schools did not ensure that the student's educational record was obtained from the Baltimore County Public Schools when the student transferred from the [REDACTED] to the [REDACTED] my in August 2019, in accordance with 34 CFR §300.323, COMAR 13A.08.02, and *The Maryland Student Records Manual*.
3. The Baltimore City Public Schools did not ensure that the student's Individualized Education Program (IEP) was implemented at the start of the 2019-2020 school year, in accordance with 34 CFR §300.323.
4. The Baltimore City Public Schools did not ensure that the IEP was revised during the 2019-2020 school year consistent with the data on the student's needs, in accordance with 34 CFR §300.324.

BACKGROUND:

The student is eighteen (18) 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.

At the start of the 2019-2020 school year, the student enrolled in the Baltimore City Public Schools. She is currently placed at the [REDACTED] in Baltimore City. During the prior school year, the student received instruction through the education program at the [REDACTED] which is operated by the Baltimore County Public Schools.

FINDINGS OF FACTS:

1. On June 27, 2019, the student met with the [REDACTED] [REDACTED] staff and reported that the last school attended was "[REDACTED] Baltimore County."
2. The Baltimore City Public Schools staff report that the [REDACTED] obtains students' educational records and shares them with the schools in which they are enrolled. However, there is no documentation that this occurred in this case.

¹ [REDACTED] provides outreach to students who have dropped out of Baltimore City Public Schools, are at high-risk of dropping out, or have been previously incarcerated (<https://www.baltimorecityschools.org>).

² [REDACTED] ([REDACTED]) is a facility operated by the Maryland Department of Juvenile Services (DJS), where the education program is provided by the MSDE Juvenile Services Education (JSE).

3. On July 31, 2019, the Baltimore City Public Schools informed the student in writing that she was assigned to the [REDACTED]. The documentation states that enrollment must be completed within ten (10) business days.
4. On August 5, 2019, the student completed a form with the registrar's office at the Excel [REDACTED] indicating that the last school attended was [REDACTED].
5. The Baltimore County Public Schools staff documented in its Student Encounter Log telephone discussions on August 21, 2019 and September 6, 2019 between the Baltimore County Public Schools staff and the [REDACTED] staff that the student's record had been transferred by facsimile. The notation in the log indicates that it took five (5) attempts to "get all of the pages through," and that the Baltimore County Public Schools staff confirmed that all of the pages were received. Neither the Baltimore County Public Schools nor the Baltimore City Public Schools documented when the request for the record was first made.
6. On September 13, 2019, the student transferred to the [REDACTED] but she is dually enrolled in the [REDACTED] for case management.
7. On September 25, 2019, an IEP team meeting was held at the [REDACTED]. The documentation of the meeting states that the team reviewed the IEP, developed on April 3, 2018, at the [REDACTED]. The team documented that, based on information from the student's father about the student's employment and field of interest, and information from her case manager that she had not yet met the student, the April 3, 2018 IEP remained appropriate. This IEP required that the student be provided with two and one-half (2.5) hours of special education instruction in the general education classroom by both general and special education teachers, and fifteen (15) minutes per week of social work services from a school counselor or social worker. There is no documentation that the IEP team had the most recent IEP developed at the [REDACTED] on April 1, 2019.
8. There are electronic mail (email) messages, dated January 10, 2020, documenting that the complainant provided the Baltimore City Public Schools with a copy of the student's IEP from the [REDACTED] dated April 1, 2019, and that the Baltimore City Public Schools requested the student's assessment data as well. There is no documentation of the receipt of these additional documents.
9. The MSDE has received two (2) different [REDACTED] IEPs for the student, dated April 1, 2019, both of which state that they are the final approved IEP from an IEP team meeting held on April 1, 2019. The IEP provided by the Baltimore County Public Schools to demonstrate completion of corrective action, which was required following a previous investigation on behalf of the student in State complaint #19-090, states that the

- team identified the student with an Emotional Disability. That IEP reflects that the team determined that the student would continue to be provided with two and one-half (2.5) hours of special education instruction per week in the general education classroom by both general and special education teachers, but increased counseling services to thirty (30) minutes per week, beginning on April 1, 2019, to be provided by a guidance counselor.
10. Along with the April 1, 2019 IEP, the Baltimore County Public Schools provided the MSDE with a written summary of the IEP team meeting explaining that the amount of counseling services was increased to address the student's need to improve school attendance. It also states that the service provider was changed from the school social worker to the school counselor because the student was unwilling to meet with the social worker, but agreed to meet with the school counselor.
 11. The April 1, 2019 IEP provided by the complainant to the Baltimore City Public Schools and the MSDE states that the IEP team identified the student with Multiple Disabilities. The IEP reflects that the team decided that the student would be provided with six (6) hours of special education instruction per week in the general education classroom, beginning on April 1, 2019, and four (4) hours per week of special education instruction in a separate special education classroom, beginning on May 28, 2019. It also states that the "team strongly recommends 30 hours a week outside the general education setting once [the student] returns to a comprehensive educational setting." This IEP also requires one (1) hour per week of psychological services from a guidance counselor or psychologist, beginning on May 28, 2019.
 12. The Baltimore County Public Schools reports that the April 1, 2019 IEP that the complainant provided to the MSDE and the Baltimore City Public Schools was revised on May 28, 2019 and should have reflected that both the special education instruction inside the general education classroom and the special education instruction in a separate special education classroom were to be effective May 28, 2019, consistent with the change to the psychological services. The written summary of a May 28, 2019 IEP team meeting is consistent with this report and reflects that an IEP team meeting was held on that date to transition the student back to the [REDACTED] from a psychiatric hospitalization. It also reflects that it was at this meeting that the team decided that the student should receive thirty (30) hours per week of special education instruction in a separate special education classroom when she returns to the community. The team documented that this level of support was not needed while the student was placed at the [REDACTED] because, in that setting, the student was receiving one-on-one teacher support in a class with low student to teacher ratios.
 13. The written summary of the May 28, 2019 IEP team meeting also indicates that the IEP team decided to defer its determination of the compensatory services owed to the student as a result of the violations identified through the investigation of State complaint #19-090 until the team knew whether the student would pass her current classes.

14. On February 10, 2020, an IEP team was convened by the Baltimore City Public Schools, which included participation by the complainant and a representative of the Baltimore County Public Schools. The IEP team documented that the Baltimore City Public Schools did not yet have the data on the student's participation in Statewide assessments and that the Baltimore County Public Schools staff promised to provide the data. The IEP team documented that the student is not attending school regularly. Based on the report of the student's father that the student is anxious and afraid to leave the house to travel to school, the team decided that she would be provided with door to door transportation to and from school to promote improved school attendance.
15. At the February 10, 2020 IEP team meeting, the team also documented that the school staff reported that, when the student does attend school, she refuses assistance, insists that she does not have an IEP, and does not attend coach classes. The school social worker reported that the student was also refusing to participate in counseling. The team documented that it reviewed the IEP developed at the [REDACTED] as well as the assessment data, and that based on information about the student's current school refusal behaviors, decided to continue the IEP developed on September 25, 2019. The team also decided to obtain additional assessment data and to review the IEP based on that data, as well as determine the impact of the lack of proper transfer of the student's record upon her transfer to Baltimore City Public Schools and the need for the provision of compensatory services to remediate the violation. The IEP team did not document that a decision was made about compensatory services owed by the Baltimore County Public Schools as a result of violations identified in State complaint #19-090 or to further defer that decision.

DISCUSSION/CONCLUSIONS:

Allegation #1 Baltimore County Public Schools – Transfer of the Record

Based on the Findings of Facts #5 and #7 - #14, the MSDE finds that there is no documentation that the Baltimore County Public Schools responded to a request for the student's educational record in a timely manner or provided all of the required information from the record, 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 a violation occurred.

Allegation #2 Baltimore City Public Schools – Transfer of the Record

Based on the Findings of Facts #1 - #8, the MSDE finds that there is no documentation that the Baltimore City Public Schools took appropriate steps to obtain all necessary documents from the student's educational record in a timely manner, 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 a violation occurred.

Allegation #3 Baltimore City Public Schools - IEP Implementation

Based on the Findings of Facts #1 - #15, the MSDE finds that the Baltimore City Public Schools did not obtain the IEP in effect at the start of the 2019-2020 school year and ensure that it was implemented, in accordance with 34 CFR §§300.101 and .323. Therefore, this office finds that a violation occurred.

Allegation #4 Baltimore City Public Schools - IEP Development

Based on the Findings of Facts #1 - #15, the MSDE finds that, because it did not take appropriate steps to obtain the student's educational record, the Baltimore City Public Schools did not ensure that the IEP was revised on September 25, 2019 based on all the student's data, in accordance with 34 CFR §§300.323 and .324. Therefore, this office finds that a violation occurred with respect to this time period.

However, based on the Findings of Facts #14 and #15, the MSDE finds that there was data to support the decisions made by the IEP team on February 10, 2020 that the IEP revised on September 25, 2019 remains appropriate. Therefore, the MSDE does not find a violation since February 10, 2020.

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 agencies 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.³ This office will follow up with the public agencies to ensure that they complete the required action consistent with the MSDE Special Education State Complaint Resolution Procedures.

If the public agencies anticipate that any of the timeframes below may not be met, or if any of the parties seeks technical assistance, they should contact Dr. Nancy Birenbaum, Compliance

³ 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.

Specialist, Family Support and Dispute Resolution Branch, MSDE, to ensure the effective implementation of the action.⁴ Dr. Birenbaum can be reached at (410) 767-7770.

Student-Based

The MSDE requires the Baltimore City Public Schools and the Baltimore County Public Schools to provide documentation by the end of the Baltimore City Public Schools' 2019-2020 school year that the IEP team, with participation from the Baltimore County Public Schools, has reviewed and revised the IEP, as appropriate, consistent with the data obtained following the February 10, 2020 IEP team meeting.

The MSDE also requires the public agencies to provide documentation by the end of the 2019-2020 school year that the IEP team has determined the compensatory services for the violations identified in State complaint #19-090, to be provided or paid for by the Baltimore County Public Schools.

The MSDE further requires the public agencies to provide documentation by the end of the 2019-2020 school year that the IEP team has determined whether the violations identified through the investigation of this State complaint had a negative impact on the student's ability to benefit from her education program. If the IEP team finds a negative impact, it must also determine the compensatory services to be provided or paid for by both the Baltimore City Public Schools and the Baltimore County Public Schools.

School/System-Based – Baltimore County Public Schools

The MSDE requires the Baltimore County Public Schools to provide documentation by September 1, 2020 of the steps taken at the [REDACTED] do the following:

1. Ensure that IEPs accurately reflect the dates that decisions are made by the IEP team; and
2. Ensure that all required documents are transferred in a timely manner in response to requests from other public agencies.

School/System-Based – Baltimore City Public Schools

The MSDE requires the Baltimore City Public Schools to provide documentation by September 1, 2020 of the steps taken to do the following:

1. Ensure that [REDACTED] staff obtain students' educational records consistent with information provided by students and their families and provide the schools in which they are enrolled with those documents in a timely manner; and

⁴ The MSDE will notify the Directors of Special Education of any corrective action that has not been completed within the established timeframe.

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2. Ensure that the [REDACTED] staff take appropriate action to obtain all required documents from the educational records of students transferring into the school in a timely manner.

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 public agencies 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

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