



Karen B. Salmon, Ph.D.
State Superintendent of Schools

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Grace Reusing, Esq.
Assistant Public Defender
Office of the Public Defender
Juvenile Protection Division
217 E. Redwood Street, Suite 1000
Baltimore, Maryland 21202

Ms. Rebecca Rider
Director of Special Education
Baltimore County Public Schools
The Jefferson Bldg. 4th Floor
105 W. Chesapeake Avenue
Towson, Maryland 21204

RE: XXXXX
Reference: #19-085

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 4, 2019, 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 (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 student has 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 the student to progress through the general curriculum while placed at the Baltimore County

Detention Center (BCDC) since September 2018, 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 student has been provided with the special education instruction and related services required by the IEP since September 2018, in accordance with 34 CFR §§300.101 and .323.

BACKGROUND:

The student is seventeen (17) 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.

On September 19, 2018, the student was placed in the BCDC, and was enrolled in the education program, which is operated by the BCPS, on September 25, 2018.

FINDINGS OF FACTS:

General Information

1. The BCDC is a local adult correctional facility operated by the XXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXX (XXXXXX). When students are placed at the BCDC, the XXXX 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 XXXX that requires the BCPS to provide education services in the facility and requires the XXXX to permit the BCPS to provide the required education services to students in the facility. It requires the BCPS and the XXXXXXXX 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. The BCPS is in the process of developing a procedural manual for the provision of educational services in the XXXX.
4. The BCPS utilizes a self-paced Blended Learning approach at the XXXX, 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.

5. The BCPS currently has access to four (4) classrooms in the XXXX 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.
6. 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.
7. 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.
8. The students placed at the XXXX 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.
9. 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 XXXX. 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.
10. The XXXX 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 XXXX

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 XXXXXX and there is no process in place for ensuring that the BCPS can provide all of the protections.

11. 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.
12. There is documentation that the BCPS administers Statewide assessments at the XXXX. 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 XXXXX makes each student available, as appropriate, for participation in assessments that are administered at the facility.
13. There is documentation that the BCPS conducts transition planning at the XXXX. 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 report that they have been unsuccessful in obtaining permission from the XXXXX to have student participate in the IEP team meetings where transition planning occurs.
14. On January 31, 2019, the MSDE issued a Letter of Findings in another case (State complaint #19-080) in which the BCPS has been required to take system-based corrective action. This action includes the following:
 - a. Steps have been taken to enforce the written agreement with the XXXX in order to ensure that there is sufficient space and access to students at the XXXX 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 XXXX 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 XXXX; 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.

15. On March 4, 2019, the MSDE issued a Letter of Findings in another case (State complaint #19-084) in which the BCPS has also been required to take the following system-based corrective action with respect to students at the XXXX:
 - a. That steps are taken to ensure that students' educational records are requested and received in a timely manner; and
 - b. That sufficient information is obtained from the sending school to determine the progress made by each student towards achievement of the IEP goals

Student-Specific Information

16. Prior to being placed at the XXX, the student was placed by the Maryland Department of Juvenile Services (DJS) at the XXXXXXXXXXXXXXXX, where the education program is operated by the Maryland State Department of Education, Juvenile Services Education System (JSES).
17. The IEP in effect when the student was placed at the XXXX was developed by the JSES on August 8, 2018. It required the provision of twenty-nine (29) hours of special education instruction primarily from a special education teacher and two (2) thirty (30) minute sessions of counseling per week. The services were to assist the student in achieving goals to improve social interaction and self-management, math calculation and problem solving, written language mechanics, reading vocabulary skills. The student, who was in the eleventh (11th) grade, was reported to be performing at the third (3rd) grade level in reading, math, and written language. The IEP developed by the JSES stated that the student required instruction in all areas in a setting with a low student-to-teacher ratio that would give him the opportunity to remediate skills deficits.
18. The student was placed in a "general hold" at the XXXXX from September 19, 2018 to September 23, 2018.
19. There is documentation that, on September 24, 2018, November 5 and 7, 2018, and December 3, 2018 requests were made to the XXXXXXXXXXXXXXXX for the student's educational record. There is also an indication in the record that some documents were received on November 8, 2018. While there is no indication of which documents were received, the August 8, 2018 IEP developed by the JSES is located in the BCPS record.
20. On October 24, 2018, the BCPS IEP team met and considered information from the student's teachers that the student requires "a lot of redirecting to remain on task," that he "struggles with vocabulary," and that he "refuses help from the teacher in the room." The team also considered information from the student's parent that the student is refusing to take his medication and that he reports that he is refusing to go to class. However, the program supervisor reported that she provides encouragement for students to attend class,

and the student's teachers reported that this has been successful with the student, which is consistent with his Daily Attendance Profile that reflects that he regularly attends class. The IEP team decided to continue the IEP goals and to have the student moved to a class of two (2) students to increase the amount of support he receives and lessen distractions. The team also decided that, with the increased support in class, the amount of special education instruction can be reduced to nineteen (19) hours per week.

21. On October 24, 2018, the IEP team considered concerns expressed by the student's parent that the previous IEP team had been looking at identifying the student with an Intellectual Disability, but that this did not occur. The team decided to follow up with the JSES staff regarding the consideration of revising his coding to Intellectual Disability. Although the team discussed that it did not have sufficient information to determine whether the progress made by the student on the IEP goals was sufficient, it did not document that it would also obtain additional information from the JSES on the student's progress towards achievement of the annual goals.
22. The JSES staff report that there has been contact between the JSES and the BCPS about the JSES' participation in a reevaluation for the student to ensure that all cognitive needs are being addressed and the appropriate steps to be taken to ensure that student records are properly transferred when students transfer from a DJS facility to the XXXXX.
23. The documentation of the October 24, 2018 IEP team meeting further states the following:

For his counseling services, the provider will be XXXX's Psychologist. The decision was made based on his current academic setting. Counseling services hours will be changed from two, 30 minutes sessions, weekly to one 60 minute session. The school Psychologist only comes once a week.
24. On November 21, 2018, reports were made that the student is making sufficient progress to achieve the annual IEP goals. The description of the progress for some of the goals reflects that some of the short-term objectives have been met. However, on other goals, the explanation for why progress is believed to be sufficient is that the student is working on them, and on the written language goal, it states that "the student will address this goal as he moves through the current curriculum."

DISCUSSION/CONCLUSIONS:

Based on the Findings of Facts #1 - #15, the MSDE finds that the BCPS has not ensured that there is sufficient space, access to students, and staffing to make sure that each student with a disability placed at the BCDC is 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.

Based on the Finding of Fact #19, the MSDE further finds that there is no documentation that appropriate steps were taken to ensure that the student's record was obtained in a timely manner when he was placed at the XXXX, in accordance with COMAR 13A.08.02 and the *Maryland Student Records System Manual*. However, based on the Finding of Fact #21, the MSDE finds that appropriate steps have now been taken.

Based on the Findings of Facts #5 - #7, #10, and #16 - #22, the MSDE finds that the BCPS did not ensure that the student received the services required by the IEP from September 25, 2018 to October 24, 2018, and cannot ensure that he will receive the amount of services required since September 25, 2018, in accordance with 34 CFR §§300.101 and .323.

In addition, based on the Finding of Fact #22, the MSDE finds that the BCPS has not ensured that the decision regarding the frequency of the provision of psychological services is based on the student's needs and not the availability of services, in accordance with 34 CFR §300.324.

Based on the Findings of Facts #20 and #23, the MSDE further finds that the BCPS has not ensured that progress on the IEP goals is consistent with the data, in accordance with 34 CFR §300.324. Therefore, this office finds that violations occurred.

CORRECTIVE ACTIONS/TIMELINES:

The MSDE requires the BCPS to provide documentation by May 1, 2019 that the IEP team has done the following:

- a. Determined whether the student has made sufficient progress towards achievement of the annual IEP goals to achieve them within one (1) year of the date that they were developed, consistent with the data;
- b. Reviewed and revised the IEP, as appropriate, to address any lack of expected progress;
- c. Determined whether the provision of counseling services through one (1) sixty (60) minute session per week meets the student's needs based on the data and not the availability of the service provider; and
- d. Determined the compensatory services or other remedy for the violations identified. If the BCPS is unable to immediately implement any decisions made by the IEP team due to lack of access to the student or space at the BCDC, the remedy must be designed to address the delay in implementation of those decisions as well. The MSDE requires the BCPS to provide documentation that the remedy has been provided within one (1) year of the date of the IEP team's decisions.

If the student is no longer placed at the BCDC in time for the IEP to be reviewed and revised and the remedy to be determined and provided, the BCPS must do the following:

1. Offer the student any needed assistance with enrolling in another education program;
2. Request that the receiving school convene an IEP team meeting to review and revise the IEP and determine a remedy for the identified violations to be provided by the BCPS; and
3. Ensure that the remedy is provided within one (1) year of the IEP team's determination in collaboration with the student's current education program.

TECHNICAL ASSISTANCE:

Technical assistance is available to the parties by contacting Ms. Bonnie Preis, Compliance Specialist, Family Support and Dispute Resolution Branch, MSDE at (410) 767-7770.

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 timelines reported in this Letter of Findings.

The school system and the student's parent 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:am

c: XXXXX
 Verletta White
 Dan Martz
 Conya Bailey

XXXXXXXXX
 Dori Wilson
 Brian Morrison
 Anita Mandis

Vicky Ciulla
Karen Larenas
Bonnie Preis