



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

June 15, 2020

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Juvenile Protection Division
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Ms. Deborah Grinnage-Pulley
Executive Director, Juvenile Services Education System
Maryland State Department of Education
200 West Baltimore Street
Baltimore, Maryland 21201

RE: [REDACTED]
Reference: #20-126

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.

ALLEGATION:

On May 6, 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 Maryland State Department of Education Juvenile Services Education System (JSES) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to the above-referenced student.

The MSDE investigated the JSES has not followed proper procedures to offer a Free Appropriate Public Education (FAPE) to the above-referenced student since March 16, 2020, in accordance with 34 CFR §§300.101, .323, *Supplemental Fact Sheet Addressing the Risk of COVID-19 in Preschool, Elementary and Secondary Schools While Serving Children with Disabilities*, United States Department of Education, March 21, 2020, and the MSDE Technical Assistance Bulletin, *Serving Children with Disabilities Under IDEA During School Closures Due to the COVID-19 Pandemic*, March 30, 2020.

BACKGROUND:

The student is fourteen (14) years old and in the eighth (8th) grade. He is identified as a student with an Other Health Impairment (OHI) under the IDEA due to difficulty with inattention, and has an IEP that requires the provision of special education instruction and related services.

During the time period covered by this investigation, the student has been placed by the Maryland Department of Juvenile Services (DJS) at [REDACTED] ([REDACTED]) where the education program is provided by the JSES.

FINDINGS OF FACTS:

1. On March 16, 2020, there was a Statewide closure of all school buildings due to the national COVID-19 pandemic. However, the JSES staff were considered essential employees until March 27, 2020, and continued to provide face-to-face education services in the DJS facilities until that date.
2. There are agendas and electronic mail (email) correspondence between the JSES and DJS staff that document that, on March 27, 2020, March 31, 2020, and April 2, 2020, staff from both agencies convened a “Blended Education Workgroup” to plan for ensuring adequate numbers of laptops and bandwidth for virtual instruction, appropriate scheduling of instruction and related services, ongoing communication between JSES and DJS staff, and training for DJS staff on the provision of virtual instruction. There is email correspondence that documents that the workgroup was also scheduled to meet on April 15, 2020, but the meeting was cancelled because there were no new issues to work on at that time.
3. On April 1, 2020, the JSES staff developed a shared drive containing schedules for virtual learning in the DJS facilities and documents to assist the DJS staff to prepare for assisting with the provision of access to virtual instruction for students in the facilities.
4. On April 2, 2020, the MSDE issued a Technical Assistance Bulletin indicating that, with parent agreement, a student’s Individualized Education Program (IEP) could be amended to reflect changes to how the IEP is implemented during the COVID-19 pandemic, consistent with Fact Sheets issued by the United States Department of Education on March 16 and 21, 2020. The Technical Assistance Bulletin also indicated that an IEP team meeting would need to occur to determine how services will be provided when a parent disagrees with the proposal for how services are to be provided.
5. On the same date, the JSES staff met with the Superintendents of each DJS facility to provide guidance on how instruction would be provided through virtual learning and offering any technical assistance needed with accessing technology.

6. On Saturday, April 4, 2020, the JSES staff provided the DJS staff with a step-by-step guide to obtain access to the weekly streaming schedule for virtual instruction each Monday morning. The documentation reflects that the JSES staff provided the DJS staff with contact information for assistance with scheduling and technology concerns that may arise.
7. An email, dated Sunday, April 5, 2020, from the principal at [REDACTED] to the DJS staff at the facility, documents the provision of log-on information for live streaming of instruction the following day to the named student and other students at the facility.
8. An email from the principal of [REDACTED] to the DJS staff at [REDACTED] dated April 6, 2020, documents that the JSES informed the DJS of the number of students at [REDACTED] who require counseling services, directed the DJS staff to the schedules for counseling for these students on a shared drive, and informed the DJS staff that the school psychologist needed to meet with the named student and another student by telephone on Wednesday, Thursday, or Friday that week. On the same date, the school psychologist sent an email to the principal indicating that he would follow up to make calls to the students to provide counseling during the times when the students were not scheduled for live streaming of instruction.
9. On April 6, 2020, the JSES sent a letter to the named student's parent explaining that during the national COVID-19 pandemic, special education services were being provided virtually and that the IEP was being implemented to the greatest extent possible through this method. The letter informed the parent that the JSES staff would be contacting her by telephone to discuss how instruction was being provided and to address any concerns.
10. The school psychologist's service log documents that he met with the named student on April 9, 2020 for one (1) hour, discussed with him how services were being provided during the COVID-19 pandemic, and worked with him on the IEP goal. The log reflects that the school psychologist worked with the student for one-half (.5) hour on April 16, 2020, for one (1) hour on April 23, 2020. It further reflects that the school psychologist attempted to work with the student twice each day on April 30, 2020, May 5, 2020, May 14, 2020 and May 21, 2020, but that the student refused the service.
11. The parent contact log reflects that the student's special education teacher contacted the student's parent by telephone on April 27, 2020 and discussed how instruction was being provided through virtual live streaming of instruction by a general education teacher and a special education teacher, and that the student would have the opportunity to obtain additional support from a case manager through Google hangout. The log also reflects that the parent was informed that the student would continue to be provided with counseling services from the school psychologist using this method. The log states that the parent had no concerns about the proposal for the provision of virtual instruction.

12. On April 27, 2020, the JSES staff developed a document amending the IEP to reflect the information in the parent contact log. The document reflects the provision of instruction through virtual live streaming of class one (1) time each week for each course, the provision of graphic organizers and a calculation device and of modeling for the completion of work during the online classes. It also reflects the provision of weekly telephone calls to address any questions and provide any additional assistance needed.
13. There is documentation that the case manager at [REDACTED] is conducting weekly check-ins with students.
14. Prior to amendment of the IEP, it required the provision of twenty-nine (29) hours per week of special education instruction from a special education teacher in a separate special education classroom. The student's schedule and the [REDACTED] master schedule reflect that since the closure of school buildings due to COVID-19, the student's school day is broken into six (6) forty-five (45) minute blocks from 8:15 a.m. until 3:45 p.m. Monday through Friday. Each week, he is scheduled to receive instruction in four (4) forty-five (45) minute blocks, one (1) for each course he is taking. There are twelve (12) forty-five (45) minute blocks each week where the student is scheduled to work with instructional materials (work packets) that are provided. There are twelve (12) forty-five (45) minute blocks each week where the student is scheduled to work with instructional materials and where access to virtual support from a special education teacher is available. The student's schedule also reflects a forty-five (45) minute block each week for instruction in middle school career technology education that covers topics such as interpersonal communication, and being a responsible adult, plus an additional forty-five (45) minute block each week for live streaming support for middle school special education courses.
15. An email from the JSES to the school staff in the DJS facilities, dated April 28, 2020, reflects that the school staff were provided with a schedule that allows students access to case managers and other special education teachers for instructional support. The email reflects that a special education case manager will be available during a forty-five (45) minute block of time for students to ask questions. It states that during these times, the case managers can also request to see specific students to work on goals and transition activities and to monitor progress. It indicates that a Google meet link was created for each school during these time periods.

16. The April 28, 2020 email states that, in addition, students were being provided with access to a special education teacher for questions on Tuesday, Wednesday and Thursday afternoon during each forty-five (45) minute block of scheduled class time. It states that schools will be grouped primarily by region with two (2) special education teachers available to answer questions via Google meet or telephone call, and that a Google meet link and telephone number has been designated for all schools by region for afternoon questions. The email reflects that the school staff were provided with instructions for case management and special education afternoon support sessions, as well as a schedule with links and assigned special education teachers.
17. There are schedules that reflect the special education teachers assigned to [REDACTED] and that the student's special education teacher was assigned to provide the case management services at [REDACTED] consistent with the information in the email to the school staff from the JSES staff.
18. Initially, classwork was not being sent to the school staff for review due to concerns about the potential for spread of COVID-19 through the sharing of classroom materials and supplies, consistent with the Centers for Disease Control and Prevention guidance, *Consideration for Schools*. Instead, the JSES staff were meeting with the DJS staff to verify completion of work in the same manner that staff from community-based schools have been communicating with parents about the completion of work when the parents are unable to provide the work product to the school staff electronically. The JSES is now having principals scan all work to teachers for review for fourth (4th) quarter and final grading.
19. There is documentation that the DJS takes class attendance and that students continue to earn points for class attendance. The principal's telephone logs documents that she checks in daily with the DJS staff about student class attendance and completion of school work. A review of the named student's point reflects that he is attending classes.
20. On May 22, 2020, the IEP team convened to review the student's progress and address behavioral needs. The documentation of the meeting reflects that at the meeting, the team discussed that the student has maintained regular attendance in his classes, but has refused counseling services. Based on information that that student was more comfortable working with the guidance counselor than the school psychologist, and that he struggles to maintain focus in counseling for more than fifteen (15) minutes at a time, the IEP was revised to require two (2) fifteen (15) minute counseling sessions per week to be provided by the guidance counselor.

21. The documentation of the May 22, 2020 IEP team meeting also reflects that the team reviewed the expectations for the provision of supports to the student during live streaming of instruction; weekly telephone calls to discuss questions about the work; live streaming of transition activities; and use of case management time to work on employment training including researching careers.

DISCUSSION/CONCLUSIONS:

In this case, the complainant alleges that the parent was not contacted about what would occur while school buildings are closed, and did not agree to amend the IEP to reflect virtual learning during the COVID-19 pandemic. The complainant alleges that the student has not been provided with the virtual instruction that the JSES reports is being provided, that the work that is too difficult for him and he does not have access to adult assistance, and that he has not been provided with the required amount of related counseling services. She further alleges that the school staff refuse to review the work the student has completed and thus is doing no progress monitoring.

Based on the Findings of Facts #1 - #21 above, the MSDE finds that the documentation does not support the allegations. Therefore, this office does not find that a violation occurred.

TIMELINE:

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.

The public agency 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.

Questions regarding the findings of facts, conclusions, and corrective actions contained in this letter should be addressed to this office in writing. The student's parent and the JSES 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

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June 15, 2020
Page 7

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 Early Intervention
and Special Education Services

MEF/am

c: Carol A. Williamson
Sylvia A. Lawson
Crystal Fleming-Brice
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