



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 2120

RE: XXXXX
Reference: #19-084

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 3, 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 June 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, reading intervention program, and the weekly psychological services required by the IEP since June 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 Specific Learning Disability under the IDEA, and has an IEP that requires the provision of special education and related services.

During June 2018, the student was placed at the BCDC and participated in the education program that is operated by the BCPS.

On July 5, 2018, the student was placed by the Maryland Department of Juvenile Services (DJS) at the XXXXXXXXXXXXXXXXXXXXXXXXXX, where the education services are provided by the Maryland State Department of Education Juvenile Services Education System (JSES).

On November 20, 2018, the student was placed in the BCDC, and has been enrolled in the education program, which is operated by the BCPS, on November 29, 2018.

FINDINGS OF FACTS:

General Information

1. The BCDC is a local adult correctional facility operated by the XXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXX (XXXX). When students are placed at the BCDC, the XXXXX 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 XXXXX to permit the BCPS to provide the required education services to students in the facility. It requires the BCPS and the XXXXX 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 BCDC.

4. 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 XXX program). While there is text-to-speech capability with the XXXX 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 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.
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 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.

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 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.
10. 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 XXXXX 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 XXXXX 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 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 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 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 report that they have been unsuccessful in obtaining permission from the XXXX 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 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.

Student-Specific Information

15. On June 15, 2018, the IEP team at the BCDC reviewed the IEP in effect for the student, which was developed on October 10, 2017 by the Baltimore City Public Schools at XXXXXXXXXXXXXXXXXXXX. That IEP states that the student receives educational services for thirty (30) hours per week. It requires the provision of five (5) hours and fifty (50) minutes of special education instruction per day in the general education classroom and one (1) thirty (30) minute session of psychological services per week to assist the student in achieving goals to improve reading, written language, math and problem solving/coping skills. The IEP states that the special education instruction is to be provided in “small groupings or one-or-one or monitoring independent work.”
16. At the June 15, 2018 IEP team meeting, the BCPS team decided to continue the goals from the incoming IEP, but to reduce the amount of special education instruction to be provided to six (6) hours per week because “all instruction at BCDC takes place in small group.” However, the team did not document how the small group setting at the BCDC is different from the small group setting in which instruction was required in the community-based setting in order to explain how the student can address the goals with a reduced amount of services.
17. On June 29, 2018, reports were made that the student was making sufficient progress on all of the IEP goals to achieve them by October 2018. However, the information in the narrative of the reports state that, “Teachers indicated the student was making limited progress and needs to attend class on a more regular basis.” There is not documentation that the IEP team considered positive behavioral interventions to address the student’s interfering behavior.
18. On July 5, 2018, the student was placed by the DJS at the XXXXXXXXXXXXXXXXXXXX XXXXXXXX, where the education services are provided by the JSES.
19. On October 17, 2018, the IEP was revised at the XXXXXXXXXXXXXXXXXXXXXXXXXXXX. The IEP developed on that date stated that the student was performing at the first (1st) grade level in reading phonics, the seventh (7th) grade level in reading comprehension, the third (3rd) grade level in math calculations, and the seventh (7th) grade level in written language. It required the provision of five (5) hours and fifty (50) minutes of special

education instruction per day in the general education classroom and one (1) thirty (30) minute session of psychological services per week to assist the student in achieving goals to improve reading, written language, math and problem solving/coping skills. The IEP stated that the special education instruction is to be provided in small grouping or one-to-one. While the Present Levels of Performance section of the IEP states that the student was being provided with support through a reading intervention program to address reading decoding/phonics deficits, the IEP does not require that special education instruction be provided through such a program.

20. On November 20, 2018, the student re-entered the BCDC, where he remained on a “general hold” until November 24, 2018.
21. The student’s schedule and correspondence among the BCPS staff reflects that the student was enrolled in health, English 10, geometry, and American government classes at the BCDC in June 2018. The class attendance documentation reflects that the student was assigned to classes and counseling at the BCDC in June 2018, but that he sometimes refused to go to class.
22. The student’s schedule and Course Activity Scores Reports reflect that the student has again been enrolled in health, English 10, geometry, and American government classes since his return to the BCDC during the 2018-2019 school year, and his transcript reflects that he had not completed those courses during the 2017-2018 year.
23. On November 26, 2018, reports were made that the student was making sufficient progress on all of the goals. However, the goals reported on were the ones in effect in June 2018 when the student was previously placed at the BCDC, and not the one in the IEP in effect for the student, which were developed at the XXXXXXXXXXXXXXXXXXXX XXXXX on October 17, 2018.
24. On January 3, 2019, the BCPS staff requested the student’s educational record from the school the student previously attended in Baltimore City. There is not documentation of a request for the educational record prior to January 3, 2019 following the student’s return to the BCDC on November 20, 2018. While the educational record at the BCDC includes documents from the XXXXXXXXXXXXXXXXXXXX, such as the IEP revised on October 17, 2018, there is no documentation of when the record was requested and received from the XXXXXXXXXXXXXXXXXXXX.
25. On January 7, 2019, the BCDC IEP team met. At the time, the team considered Information from the student’s teachers that the student likes to socialize in class and ask off-topic questions, but will get to work once reminded. The social studies teacher reported that the student attempted the High School Assessment in Government, that he believes that the student in putting forth good effort, and that the APEX program will help support his skills. However, the team documented its discussion that the student had not

been at the BCDC long enough to measure his progress towards achievement of the IEP goals. The team decided, without explanation, to continue the goals and services from the IEP that was in effect in June 2018 when the student was previously placed at the BCDC, instead of the IEP that was revised on October 17, 2018 by the JSES.

DISCUSSION/CONCLUSIONS:

Based on the Findings of Facts ##1 - #14, 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 Findings of Facts #19, #21, and #22, the MSDE finds that the student has been enrolled in classes he needs in order to graduate with a Maryland High School diploma and that special education and related services are provided at the BCDC. Further, based on the Finding of Facts #19, the MSDE finds that the IEP does not require that the student participate in a reading intervention program.

However, based on Finding of Facts #15 - #24, the MSDE finds that there is no documentation that BCPS obtained the student's educational record in a timely manner, and did not ensure that the special education and related services were being provided in accordance with the current IEP between November 2018 and January 2019, in accordance with 34 CFR §§300.101 and .323.

Based on the Findings of Facts #5 - #7, #21, the MSDE finds that the BCPS has not been able to ensure that the student consistently receives the services required by the IEP and has not ensured that the IEP team considered positive behavior interventions to address the student's interfering behavior of class refusal, in accordance with 34 CFR §§300.101, .323 and .324.

In addition, based on the Findings of Facts #15 - #17 #23, the MSDE finds that there is no documentation that the June 2018 IEP team's decisions about the student's program were based on the student's needs and not the service delivery system, and that reports of the student's progress made in June 2018 were based on the data, in accordance 34 CFR §§300.324.

Based on the Findings of Facts #25, the MSDE also finds that the BCPS did not ensured that sufficient information about the student's progress was obtained to review and revised the IEP on January 7, 2019 and there is no documentation that the IEP was revised based on the student's need, in accordance with 34 CFR §§300.324. Therefore, this office finds that violations occurred.

CORRECTIVE ACTIONS/TIMELINES:

Student-Specific

The MSDE also requires the BCPS to provide documentation by May 1, 2019 that it has reviewed and revised the IEP, consistent with the data regarding the student's present levels of performance and progress towards the goals developed on October 17, 2018, to ensure that it addresses the student's needs. The MSDE also requires the BCPS to ensure that the IEP team and considers positive behavioral interventions to address work refusal when reviewing and revising the IEP.

The MSDE also requires the BCPS to provide documentation by May 1, 2019 that the IEP team has determined the compensatory services or other remedy from the violation identified through this investigation. If the BCPS is unable to immediately implement any decision made by the IEP team about the student's program 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 that 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.

System-Based

In addition to the system-based corrective action required as a result of the investigation of State complaint #19-080, the MSDE requires that the BCPS provide documentation by the end of the 2018-2019 school year of the following:

- 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.

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:aam

c: XXXXXXXX
 Verletta White
 Dan Martz
 Conya Bailey
 XXXXXXXX
 Dori Wilson
 Brian Morrison
 Anita Mandis
 Vicky Ciulla
 Karen Larenas
 Bonnie Preis