



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

March 15, 2019

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

Ms. Trinell Bowman  
Director of Special Education  
Prince George's County Public Schools  
John Carroll Elementary School  
1400 Nalley Terrace  
Landover, Maryland 20785

RE: XXXXX  
Reference: #19-098

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 24, 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 Prince George's County Public Schools (PGCPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to the student.

The MSDE investigated the following allegations:

1. The PGCPS 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 XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX (XXXXXX) since September 2018, in accordance with 34 CFR §§300.2, .17, .101, .160, .320, .321, .324, Md. Code Ann., Educ. §7-103, and COMAR 13A.05.01.09.

2. The PGCPS 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 instruction.

On May 24, 2018, the student was placed in the XXXXXX.

**FINDINGS OF FACTS:**

1. The XXXXX is a local adult correctional facility operated by the XXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXX (XXXXXXXXXX).
2. The Memorandum of Understanding (MOU) between the XXXXX and the PGCPS states that the XXXXX will provide appropriate work space for teachers, ensure than no more than fifteen (15) students are allowed per teacher, notify the PGCPS staff of any substantial changes that may affect the housing or instruction of the students, and ensure that quarterly meetings are held with the PGCPS. The MOU states that the PGCPS will provide each juvenile student with a minimum of 240 minutes (4 hours) of instruction per day or three (3) eighty (80) minute blocks of instruction per day, provide teachers with professional development and supervision, and provide students with disabilities a FAPE.
3. The PGCPS provides six and one-half (6.5) hours of instruction per day to students in community-based secondary schools. The 2018-2019 school year began on September 4, 2018 and is scheduled to end on June 14, 2019. There are twenty (20) scheduled holidays, closings, and breaks within the school year calendar, which is approved by the MSDE as providing a minimum of 180 school days and 1,080 school hours in a ten (10) month period of time. These same holidays, closings, and breaks are provided within the education program at the PGCCC.
4. The PGCPS currently provides four and one-half (4.5) hours of instruction per day on a year round basis to juveniles placed in the XXXX. Instruction is provided in one and one-half (1.5) hour blocks, three (3) times per day for a total of twenty-two and one-half (22.5)

hours per week. The English and math classes are held each day, and the science and social studies classes are provided every other day on an alternating basis. The school schedule reflects that adults who are students with disabilities receive twenty-two (22) hours per week of instruction. Students who do not complete a course during the school year continue to receive instruction in the course until the start of the following school year.

5. There are fifty-four (54) days, or 243 hours of instruction that will be provided to juveniles and 237 hours to adults at the XXXXX between the end of the 2018-2019 school year and the start of the 2019-2020 school year, excluding the Fourth of July and Labor Day holidays. This amounts to 1,233 hours of instruction per year for juveniles and 1,205 for adults.
6. There are currently approximately seven (7) students assigned to each class. Instruction is provided by teachers who are certified in the content area in which instruction is provided with the exception of English. There is a special education teacher present in each class as well. In addition, the PGCPs utilizes tutors from the XXXXXXXXXXXXXXXX<sup>1</sup> to assist in the provision of instruction. The instruction in English is provided solely by a teacher who holds certification in special education only, and there is no documentation that this teacher provides instruction in collaboration with a teacher who holds certification in that content area.
7. The students placed in the XXXXXX do not participate in Statewide assessments and the XXXXXX does not provide the PGCPs with information on whether a student has been convicted of a crime as an adult or is being detained pending trial. The school staff express concern about the validity of the results of assessments administered when a student is experiencing incarceration.
8. A review of the student's educational record reflects that he was in the tenth (10<sup>th</sup>) grade at XXXXXXXXXXXXXXXX<sup>2</sup> when he was placed at the XXXXXX. The record reflects that the student was able to complete the courses he was taking in the tenth (10<sup>th</sup>) grade when he was placed at the XXXXXX. Since being placed at the XXXXX, the student has earned credit for those courses and matriculated to the eleventh (11<sup>th</sup>) grade.

---

<sup>1</sup> XXXXXXXXXXXXXXXX builds connections between universities and local departments of corrections to provide supplemental educational resources in correctional facilities at no cost to those facilities (<http://www.XXXXXXXXXXXXXX.org>).

<sup>2</sup> During the 2017-2018 school year, the student began attending XXXXXXXXXXXXXXXX, but transferred to XXXXXXXXXXXXXXXX on January 31, 2018.

9. The IEP in effect in September 2018 required the provision of twelve (12) hours and thirty (30) minutes per week of special education instruction to address goals to improve the student's peer and adult interactions, reading, written language, math, and coping skills, and his ability to maintain attention to tasks. It did not require the provision of related services.
10. On November 20, 2018, the IEP team conducted an annual review of the IEP that was developed when the student was attending XXXXXXXXXXXXXXXXXXXXXXXX. The team documented that the student continues to perform at the same grade levels as he did the previous year. The team continued the goals, including many of the short-term objectives within those goals, and the time to achieve them was extended to November 2019. The team also documented that the Behavioral Intervention Plan (BIP) would not be implemented at the XXXX because the XXXXXX "has policy and procedures that must be adhered to regarding any behavioral issues."
11. The school staff report that they believe that the goals remain appropriate for the student and that they do not believe that the behaviors that were documented as interfering with progress in the community-based school, i.e., distraction due to the student's use of a cellular telephone in the classroom, would continue in the current setting because he does not have access to such distracting items. The IEP goal reports made prior to the student's placement at the XXXXXX reflect that the student was not making sufficient progress towards achieving them. However, the team did not document the basis for continuing the goals and discontinuing the BIP on November 20, 2018, and did not previously convene to address the lack of expected progress that was being reported when the student entered the facility.
12. On December 4, 2018, the IEP was amended to increase the amount of special education instruction to fifteen (15) hours per week without explanation and without agreement of the student's parent. The school staff report that they believe that this change was made as a result of an increase in the length of the school day from four (4) hours to four and one-half (4.5) hours.
13. On Thursday, January 17, 2019, the education services unit for juveniles was moved to another unit due to building heating problems. The student class sign in sheets document that the juvenile students were required to remain on their residential units until Wednesday, January 23, 2019, when space was made available in the adult learning center for them to receive education services.<sup>3</sup>

---

<sup>3</sup> Monday, January 21, 2019, was a holiday and school was not open.

14. On March 7, 2019, the student was placed on “lockdown.” The XXXXXX places students on “lockdown” for safety reasons due to behavior, and does not permit them to leave their cells. The PGCPS does not track services missed to ensure that disciplinary protections are provided following the tenth (10<sup>th</sup>) day of removal from education services when students are placed on “lockdown.”

## **DISCUSSION/CONCLUSIONS:**

### **Allegation #1 Education Services That Meet State Standards**

#### **Responsibility for a FAPE**

The implementing regulations of the IDEA explain that the federal requirements related to the education of students with disabilities apply to all political subdivisions of a State that are involved in the education of students with disabilities, including those in State and local juvenile and adult correctional facilities. These regulations require that each education program for students with disabilities meet the educational standards of the State Education Agency (34 CFR §§300.2, .17, and .149).

In Maryland, the local education agency is required to ensure the provision of a FAPE to students with disabilities incarcerated in local adult correctional facilities located within the jurisdiction of the local education agency (COMAR 13A.05.01.09). Based on the Finding of Fact #1, the MSDE finds that the PGCPS is responsible for locating and providing a FAPE to students with disabilities placed at the XXXXXX and must ensure that those students have access to instruction to allow them to achieve credit requirements necessary to progress towards the State standards for graduation from a public high school (34 CFR §§300.101 - .103 and .111).

#### **Instruction to Enable Students to Progress through the General Curriculum**

To be awarded a Maryland High School Diploma, a student must have earned a minimum of 21 credits, including specific core credits. In order to provide students with sufficient time to meet these requirements, public schools in Maryland must be open for pupil attendance for at least 180 actual school days and a minimum of 1,080 school hours during a ten (10) month period in each school year. The county board of Prince George’s County may elect to operate one (1) or more schools within the county on a year-round basis, provided that the 180 day and minimum hour requirements are met (Md. Code Ann., Educ. §7-103).

Based on the Findings of Facts #1 - #5 and #8, the MSDE finds that the PGCPS has ensured that students with disabilities placed at the XXXXXX are provided with sufficient time to meet the graduation requirements, in accordance with Md. Code Ann., Educ. §7-103. Therefore, this office does not find that a violation occurred with respect to that aspect of the allegation.

While the IDEA requires that the public agency ensure that students with disabilities participate in Statewide assessments, it provides a specific exception to that requirement with respect to students who are convicted as adults and incarcerated in adult prisons [Emphasis added] (34 CFR §§300.324).

Based on the Finding of Fact #7, the MSDE finds that the PGCPS has not ensured that students who have not been convicted as adults participate in Statewide assessments, in accordance with 34 CFR §§300.324. Therefore, this office finds that a violation occurred with respect to this aspect of the allegation.

### IEP Development

The public agency must ensure that the IEP team reviews the IEP at least annually. It must also ensure that the IEP is revised, as appropriate, to address lack of expected progress towards achievement of the annual IEP goals. The changes to the IEP can be made either through the IEP team process or by amending the IEP with the agreement of the parent after the annual review each year by the IEP team.

Generally, the special education services must be based on the decisions made about the student's individual needs and not solely on factors such as the configuration of the service delivery system, availability of staff, or administrative convenience (34 CFR §§300.101, .103, 116, .320, .323, .324 and *Dear Colleague Letter*, United States Department of Education, Office of Special Education and Rehabilitation Services, December 5, 2014 and *Letter to Clay*, United States Department of Education, Office of Special Education Programs, May 17, 1995). However, the IEP team for students who are convicted as adults and incarcerated in adult prisons [Emphasis added] can make revisions to the program or placement when there is a bona fide security interest that cannot otherwise be accommodated (34 CFR §§300.324).

In addition, within a reasonable time before the public agency proposes or refuses to initiate a change to the identification, evaluation or educational placement or the provision of a FAPE, it must provide the parent with written notice. This notice must include information such as an explanation of why it proposes or refuses to take the action and a description of the data used as a basis for the decision (34 CFR §§300.503).

Based on the Findings of Facts #9 - #12, the MSDE finds that the PGCPS did not ensure that the IEP was reviewed and revised, as appropriate, by the IEP team to address lack of expected progress and did not ensure that revisions made to the IEP on December 4, 2018 were made through either the IEP team process of agreement of the parent, in accordance with 34 CFR §300.324.

In addition, based on those Findings of Facts, the MSDE finds that the PGCPS did not ensure that prior written notice of decisions were provided to the student's parent, in accordance with 34 CFR §300.503. Therefore, this office finds that violations occurred with respect to this aspect of the allegation.

## **Allegation #2 IEP Implementation**

The public agency must ensure that each student with a disability is provided with the special education and related services required by the IEP 34 CFR §§300.101 and .323).

The IDEA requires the State Education Agency (SEA) to establish qualifications to ensure that personnel necessary to provide special education and related services are appropriately prepared and trained, including that those personnel have the content knowledge and skills to do so (34 CFR §§300.156). In Maryland, teachers are required to have a valid certification in the area of major assignment (COMAR 13A.12.02). The MSDE has provided guidance that there must be consultation between uncertified teachers and team leaders holding certification if the teacher with primary responsibility for the curriculum content does not hold certification in that area (MSDE Technical Assistance Bulletin: *Improving Outcomes for Students with Disabilities – Curriculum, Instruction, and Assessment*, March 2018 and January 2019).

A student in a correctional facility who violates a code of conduct is entitled to the IDEA discipline protections regardless of whether the student is subject to discipline in the facility or removed to restricted settings, such as confinement to the student's cell or "lockdown" units (*Dear Colleague Letter*, United States Department of Education, Office of Special Education and Rehabilitation Services, December 5, 2014).

Based on the Findings of Facts #3, #6, #8, #9, and #13, the MSDE finds that the student is provided with special education instruction to enable him to progress through the general education curriculum, in accordance with 34 CFR §§300.101, .323.

However, based on the Finding of Fact #6, the MSDE finds that the student has not been provided with special education instruction in English by a teacher who holds certification in that content area, in accordance with COMAR 13A.12.02 and the MSDE Technical Assistance Bulletin: *Improving Outcomes for Students with Disabilities – Curriculum, Instruction, and Assessment*, March 2018 and January 2019. Therefore, this office finds that a violation occurred with respect to this aspect of the allegation.

Notwithstanding the violation, based on the Finding of Fact #8, the MSDE finds that there was no impact on the student's ability to benefit from the education program. Therefore, no student-specific corrective action is required to remediate the violation.

In addition, based on the Finding of Fact #14, MSDE finds that the PGCPs does not take appropriate steps to ensure that students placed at the XXXX receive disciplinary protections as a result of the loss of more than ten (10) days of instruction in a school year, in accordance with 34 CFR §§300.101, .323, .530, and *Dear Colleague Letter*, United States Department of Education, Office of Special Education and Rehabilitation Services, December 5, 2014. Therefore, this office finds that a violation occurred with respect to this aspect of the allegation.

Based on the Finding of Fact #9, the MSDE finds that the IEP does not require the provision of related services, and therefore, identifies no violation with respect to this aspect of the allegation, in accordance with 34 CFR §§300.101 and .323.

### **CORRECTIVE ACTIONS/TIMELINES:**

#### **Student-Specific**

The MSDE requires that the PGCPs provide documentation by the end of the 2018-2019 school year that the IEP team has done the following:

- a. Identified any social, emotional, and behavioral needs the student may have and the positive behavioral interventions needed to address them;
- b. Reviewed the IEP and the student's progress towards achievement of the annual goals, and revised the IEP, as appropriate, to address any lack of expected progress;
- c. Reviewed the revisions made to the IEP on December 4, 2018 and determined whether those revisions remain appropriate;
- d. Determined the compensatory services or other remedy for the delay in addressing the student's needs if the IEP requires revision due to lack of expected progress or the need to address the student's behavior;
- e. Determined whether the student was removed in excess of ten (10) school days during the 2018-2019 school year for disciplinary or security reasons, and if so, determine the compensatory services needed or other remedy, determine whether the behavior was a manifestation of the student's disability, and revise the IEP, as appropriate, to address the behavior; and
- f. Determined the Statewide assessments that the student needs to take and develop a plan for ensuring his participation in those assessments or document the compelling security interest that cannot otherwise be accommodated to enable him to participate in those assessments.



### **System-Based**

The MSDE requires that the PGCPs provide documentation by the start of the 2019-2020 school year that steps have been taken to do the following with respect to students placed at the XXXXXXXXXX:

- a. Ensure that students participate in Statewide assessments, as required;
- b. Ensure that the IEP is reviewed and revised, as appropriate, to address lack of expected progress towards achievement of the annual goals;
- c. Ensure that IEP revisions are made either by agreement of the parents or through an IEP team meeting;
- d. Ensure that prior written notice is provided to parents;
- e. Ensure that instruction in English is provided by a teacher who is certified in the content area or through collaboration with a teacher who holds such certification; and
- f. Ensure that the IDEA disciplinary protections are provided after the tenth (10<sup>th</sup>) day of removal in a school year.

### **TECHNICAL ASSISTANCE:**

Technical assistance is available to the parties by contacting Dr. Nancy Birenbaum, 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

Grace Reusing, Esq.  
Ms. Trinell Bowman  
March 15, 2019  
Page 10

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:       XXXXXXXXX  
          Monica E. Goldson  
          Gwendolyn Mason  
          Barbara Vandyke  
          Shelly Woodson  
          XXXXXXXXX  
          Dori Wilson  
          Anita Mandis  
          Janet Zimmerman  
          Nancy Birenbaum