



**Mohammed Choudhury**  
State Superintendent of Schools

December 29, 2021

Ms. Stephanie Joseph  
Assistant Public Defender  
Office of the Public Defender  
191 E. Jefferson St. 3<sup>rd</sup> Floor  
Rockville, Maryland 20850

Mr. Philip A. Lynch  
Director of Special Education Services  
Montgomery County Public Schools  
850 Hungerford Drive, Room 225  
Rockville, Maryland 20850

RE: [REDACTED] and Similarly Situated Students  
Reference: #22-052

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 November 2, 2021, the MSDE received a complaint from Ms. Stephanie Joseph, hereafter, “the complainant,” on behalf of the above-referenced student. In that correspondence, the complainant alleged that the Montgomery County Public Schools (MCPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to the student.

The MSDE investigated the allegation that the MCPS has not ensured students were provided with the special education and related services, as required by their Individualized Education Programs (IEPs) at the [REDACTED] ([REDACTED]) since November 2020, in accordance with 34 CFR §§300.323 and .101.

**BACKGROUND:**

The student is seventeen (17) years old, is identified as a student with an Other Health Impairment under the IDEA related to Attention Deficit Hyperactivity Disorder, and has an IEP that requires the provision of special education and related services. The student has been enrolled in the education program at the [REDACTED] which is operated by the MCPS, since October 13, 2021.

**FINDINGS OF FACTS:**

1. The [REDACTED] is a local adult correctional facility operated by the [REDACTED] ([REDACTED]).
2. The MCPS has a written agreement with the [REDACTED] that requires the MCPS to provide education services in the facility and requires the [REDACTED] to permit the MCPS to provide the required education services to students in the facility.
3. The agreement requires that the MCPS is “legally obligated to provide 15 hours of instruction weekly due to receipt of federal grant funds under Neglected, Delinquent & At-Risk Programs.” The Agreement further requires that the MCPS provide, “coursework necessary for inmates with learning disabilities to continue their high school programming” and that the MCPS must ensure that “special education services are provided in accordance with applicable federal and state laws and regulations and with the inmates IEP.”
4. The student’s IEP in effect in October 12, 2021 reflects the need for 2 hour and 15 minutes per day of specialized instruction outside of the general education setting delivered by a special education teacher and a therapeutic behavioral aide and 3 hours per day of specialized instruction inside the general education classroom delivered by general education and special education teachers.
5. On October 13, 2021, the student was incarcerated at the [REDACTED].
6. On October 19, 2021, the student’s IEP was amended by the MCPS to reflect 5 hours per week of specialized instruction outside of the general education environment and 1 hour and 15 minutes of specialized instruction per week inside the general education setting.
7. On November 2, 2021, the MCPS generated a prior written notice reflecting the amendment change documenting the basis of the change as: “MCPS proposed to reduce the total time in school to 15 hours a week because [the student] is receiving special education services in an adult correctional facility.”

8. While there is documentation that the student was provided with some instruction from the MCPS staff during the time he was incarcerated at the [REDACTED] the documentation does not reflect that the student was provided with the amount of instruction required by the IEP upon entry to the facility.

### **DISCUSSION/CONCLUSIONS:**

Based on the Findings of Facts #4 - #8, the MSDE finds that the student was not provided with the amount of special education services required by the IEP, in accordance with 300.323 and .101. Further, based on the FOF #1-3 and #7, the MSDE finds that the MCPS do not have procedures in place to ensure that eligible students with disabilities incarcerated at the [REDACTED] are provided with the special education services and support required by their IEPs, in accordance with 300.323 and .101, Therefore, this office finds that violations have occurred.

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

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 agency to provide documentation of the completion of the corrective actions listed below.<sup>1</sup>

This office will follow up with the public agency to ensure that it completes the required action consistent with the MSDE Special Education State Complaint Resolution Procedures. If the public agency anticipates that the timeframe below may not be met, or if any of the parties seeks technical assistance, they should contact Dr. Nancy Birenbaum, Compliance Specialist, Family Support and Dispute Resolution Branch, MSDE, to ensure the effective implementation of the action.<sup>2</sup> Dr. Birenbaum can be reached at (410) 767-7770 or via email at [nancy.birenbaum@maryland.gov](mailto:nancy.birenbaum@maryland.gov).

---

<sup>1</sup> The 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.

<sup>2</sup> The MSDE will notify the Directors of Special Education of any corrective action that has not been completed within the required timelines.

### **Student-Specific**

The MSDE requires the MCPS to provide documentation of the following by February 1, 2022:

1. That the IEP team has convened and determined services appropriate for the student, based on his needs, during the time that he is placed at the [REDACTED] and made appropriate revisions to his IEP.
2. That the IEP team has determined the compensatory services or other remedy for the violation identified through this investigation. If the MCPS is unable to immediately implement any decisions made by the IEP team about the student's program due to lack of access to the student or space at the [REDACTED] the remedy must be designed to address the delay in implementation of those decisions as well.

If the student is no longer placed at the [REDACTED] during the time the IEP is to be reviewed, revised, and the remedy determined and provided, the MCPS 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 the compensatory services or other remedy to be provided by the MCPS for the identified violation; and
3. Ensure that the compensatory services or other remedy is provided within one (1) year of the IEP team's determination in collaboration with the receiving school.

### **System-Based**

The MSDE requires that the MCPS provide documentation by May 1, 2022 of efforts taken by the MCPS to ensure that there is access to students with disabilities at the [REDACTED] to allow the school system to provide a Free and Appropriate Public Education (FAPE) that meets the State's standards to enable students to progress through the general education curriculum and demonstrate progress on annual IEP goals.

The MSDE further requires that the MCPS identify other students with disabilities who have been placed in the [REDACTED] since November 2020, and determine if those students have been subject to the same violation identified above for the named student. This includes a review of the IEP of each eligible student who has been placed at the [REDACTED] and a determination as to whether there was a reduction of services based only on their admission to the facility. For each student identified during that review who has been subject to the same violation, an IEP team must be convened to determine the compensatory services or other remedy to be provided by the MCPS.

Ms. Stephanie Joseph  
Mr. Phillip Lynch  
December 29, 2021  
Page 5


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 Early Intervention and Special Education Services

MEF:gl

c:   
Monifa B. McKnight  
Diana Wyles  
Maritza Macias  
Brian Morrison  
Gerald Loiacono  
Nancy Birenbaum