



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

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March 9, 2017

Ms. Eliza Steele
Senior Monitor
Office of the Attorney General
Juvenile Justice Monitoring Unit
200 Saint Paul Place, 19th Floor
Baltimore, Maryland 21202

Ms. Deborah Grinnage-Pulley
Executive Director
Juvenile Services Education System
Office for School Effectiveness
Maryland State Department of Education
200 W. Baltimore Street
Baltimore, Maryland 21201

RE: XXXXX
Reference: #17-073

Dear Parties:

The Maryland State Department of Education, Division of Special Education/Early Intervention 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 December 21, 2016, the MSDE received a complaint from Ms. Eliza Steele, Senior Monitor, Juvenile Justice Monitoring Unit, Office of the Attorney General, hereafter, “the complainant,” on behalf of the above-referenced student.

In that correspondence, the complainant alleged that Maryland State Department of Education, Juvenile Services Education (JSE) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to the above-referenced student.

The MSDE investigated the allegation that the JSE has not provided the student with special education instruction in the educational placement required by the Individualized Education Program (IEP), since February 23, 2016, in accordance with 34 CFR §§300.101 and .323.

INVESTIGATIVE PROCEDURES:

1. On December 21, 2016, the MSDE received the State complaint.
2. On December 22, 2016, the MSDE sent a copy of the complaint, via facsimile, to Ms. Deborah Grinnage-Pulley, Executive Director, Juvenile Services Education System, MSDE.
3. On January 6, 2017, the MSDE sent correspondence to the complainant that acknowledged receipt of the complaint and identified the allegation subject to this investigation. The MSDE also notified Ms. Grinnage-Pulley of the allegation to be investigated and requested that her office review the alleged violation.
4. On January 9, 2017, Mr. Albert Chichester, Complaint Investigator, MSDE, conducted a telephone interview with the complainant to discuss the allegation.
5. On February 2, 2017, Mr. Chichester and Ms. Anita Mandis, Complaint Investigation Section Chief, MSDE, met with Ms. Dawn Hubbard, Compliance Specialist, Juvenile Services Education System, MSDE, to review documentation on behalf of the student.
6. On February 24, 2017, Mr. Chichester conducted an interview with Ms. XXXXXXXX, the student mother.
7. Documentation provided by the parties was reviewed. The documents referenced in this Letter of Findings include:
 - a. IEP, dated February 12, 2016;
 - b. IEP, dated March 16, 2016;
 - c. IEP, dated July 11, 2016;
 - d. IEP meeting summary, dated March 16, 2016;
 - e. IEP meeting summary, dated July 11, 2016;
 - f. IEP meeting summary, dated December 27, 2016;
 - g. The State of Maryland Interagency Agreement (17-MOU-007), between the MSDE and the Maryland Department of Juvenile Services (DJS), signed by Dr. Karen B. Salmon, MSDE, in August 2016 and Mr. Sam Abed, DJS, in October 2016; and
 - h. Correspondence from the complainant containing an allegation of a violation of the IDEA, received by the MSDE on December 21, 2016.

BACKGROUND:

The student is 17 years old and is identified as a student with an Emotional Disability under the IDEA. She has an IEP that requires the provision of special education instruction and related services (Doc. a - c).

She was placed by the Maryland Department of Juvenile Services (DJS) at the XXXXXXXXX XXXXXXXXX (XXXXXX) from February 23, 2016 to January 17, 2017. Prior to that period,

Ms. Eliza Steele
Ms. Deborah Grinnage-Pulley
March 9, 2017
Page

the student was placed by the Washington County Public Schools at XXXXXXXXXXXX
XXXXXXXX, a nonpublic, separate, special education school (Doc. a and a review of the JSE
record)

On January 17, 2017, the student was placed by DJS back into the community. The Washington
County Public Schools returned the student to XXXXXXXXXXXXXXXXXXXX, where she is
residentially placed (Interview with the student's parent).

During the time period covered by this investigation, the student's parent participated in the
education decision-making process and was provided with written notice of the procedural
safeguards (Docs. a - f).

FINDING OF FACTS:

1. The DJS placed the student at XXXX on February 23, 2016. The IEP in effect on that date reflects that the student's education is impacted by her refusal to complete work, lack of consistent class attendance, verbal threats, inattentiveness, lack of appropriate interpersonal relationships, and unsafe methods of emotional regulation and expression. The IEP includes goals for the student to improve classroom compliance and coping strategies. The IEP requires that the student be provided with twenty-nine (29) hours of special education instruction each week, in a "highly structured setting that would provide her with therapeutic supports." The IEP also requires one (1) hour each week of counseling be provided as a related service (Doc. a).
2. On March 16, 2016, the IEP team at XXX determined that the student would receive all but one hour per week of special education instruction in the general education classroom, and that she would receive one (1) hour of special education instruction "outside the general education setting." The IEP also required counseling be provided as a related service (Docs. b and d).
3. On July 11, 2016, the IEP team at XXXX convened. The meeting summary reflects that, the IEP team reviewed the student's file, the delivery of special education services, and teacher observations, and determined that the student was, in fact, receiving the same services in the general education classroom environment at XXXX as she received prior to her placement at XXXX. The IEP team also determined that the classroom at XXXXX provided the student with a low student-to-teacher ratio, a high level classroom structure, and behavioral supports in the classroom (Doc. e).
4. There is documentation that daily attempts were made by a special education teacher to provide the student with the required one (1) hour each week of special education instruction outside the general education classroom. The documentation reflects that the student sometimes refused to leave the classroom for instruction, resulting in the services being provided inside the classroom. It also reflects that on several occasions, when the DJS did not provide sufficient staff to permit the student to be safely escorted to receive services outside of the classroom, those services were provided inside the classroom (Doc. h and a review of the student's record).

5. A 2016 Interagency agreement between the JSE and the DJS reflects that the DJS is responsible for providing the necessary educational space and security personnel to allow the JSE to provide educational programs in DJS residential facilities. Specifically, the DJS must ensure that DJS residential advisors and supervisors are available to assist educational staff in providing educational services for students during school and to cooperate with the JSE to maintain security and custody of youth and staff within the school (Doc. g).
6. The report of the student's progress on the IEP goals, dated June 24, 2016, documents that the student was making sufficient progress on the goal to increase compliance in the learning environment, but was not making sufficient progress on the goal for her to actively participate in counseling sessions because she refused to participate in these sessions (Doc. e).
7. At the July 11, 2016 IEP meeting, the IEP team addressed the student's behavior by revising the goals and the Behavior Intervention Plan (BIP) to include additional strategies and incentives (Docs. c and e)
8. The progress report, dated November 14, 2016, documents that the student was no longer making sufficient progress on the goal to increase compliance in the learning environment. The staff reported that the student refused to engage in academic activities, refused to complete assignments or participate in counseling services, and refused supports that were available to her (Doc. c).
9. On December 27, 2016, the IEP team conducted a reevaluation and discussed the student's continuing pattern of refusal to participate in the educational program. The team also reviewed the BIP and discussed revisions to be made to her behavior contracts. The team determined that, based on the student's frequent refusal to participate in instruction and counseling services, a new Functional Behavior Assessment (FBA) needed to be conducted, and that the data would be reviewed at a January 2017 IEP meeting (Doc. f).
10. On January 17, 2016, the DJS returned the student to the community. She has been re-enrolled in the Washington County Public Schools (WCPS) and is again placed in a nonpublic, separate, special education school (Review of the student's record).

DISCUSSION/CONCLUSIONS:

Each public agency must ensure that students are provided with the special education and related services required by the IEP (34 CFR §§300.101 and .323 and COMAR 13A.05.11.06).

In order to provide a student with a Free Appropriate Public Education (FAPE), the public agency must ensure that an IEP is developed that addresses all of the needs that arise out of the student's disability that are identified in the evaluation data. In the case of a student whose behavior impedes the student's learning or that of others, the IEP team must also consider the use of positive behavioral interventions and supports, and other strategies, to address the behavior (34 CFR §§300.301, .320, and .324).

Ms. Eliza Steele
Ms. Deborah Grinnage-Pulley
March 9, 2017
Page 5

In this case, the complainant alleges that the student was not provided with one (1) hour of special education instruction, each week, outside the general education classroom. Based on the Findings of Facts #1 - #10, the MSDE finds that no violation has occurred with respect to the allegation.

Further, based on the Findings of Facts #4, #7, and #9, the MSDE finds that the IEP team considered behavior interventions to address the student's refusal to accept special education instruction, as required. Therefore, this office does not find that a violation occurred.

TIMELINE:

Please be advised that the complainant and the JSE have the right to submit additional written documentation to this office within fifteen (15) days of the date of this letter if they disagree with the findings of fact or conclusions reached in this Letter of Findings. The additional written documentation must not have been provided or otherwise available to this office during the complaint investigation and must be related to the issues identified and addressed in the Letter of Findings. If additional information is provided, it will be reviewed and the MSDE will determine if a reconsideration of the conclusions is necessary.

Upon consideration of this additional documentation, this office may leave its findings and conclusions intact, set forth additional findings and conclusions, or enter new findings and conclusions.

Questions regarding the findings and conclusions contained in this letter should be addressed to this office in writing. The parent and the school system 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 due process.

Sincerely,

Marcella E. Franczkowski, M.S.
Assistant State Superintendent
Division of Special Education/Early Intervention Services

MEF:ac

c:	XXXXXX	Crystal Fleming-Brice	Anita Mandis
	Anna Lisa Nelson	Beth Hart	Albert Chichester
	Dawn Hubbard	Alan Dunklow	
	XXXXXX	Dori Wilson	