



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

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July 24, 2018

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Director of Compliance and Student Support  
Department of Special Education and Psychological Services  
191 South East Street  
Frederick, Maryland 21701

RE: XXXXX  
Reference: #18-170

Dear Parties:

The Maryland State Department of Education (MSDE), Division of Special Education/Early Intervention Services (DSE/EIS), 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:**

The FCPS has not ensured that a Free Appropriate Public Education (FAPE) was provided while the student was at the Frederick County Adult Detention Center, since April 9, 2018, in accordance with 34 CFR §§300.2 and .323 and COMAR 13A.05.01.09.

**BACKGROUND:**

The student is seventeen (17) years old, is identified as a student with an Emotional Disability under the IDEA. He is committed to the custody of the Maryland Department of Juvenile

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Services (DJS) and is detained at the Frederick County Adult Detention Center. Previously, the student attended school at the XXXXXXXXXXXXXXXXXXXX, a DJS residential facility. He has an IEP that requires the provision of special education and related services.

### **FINDINGS OF FACTS:**

#### **FCPS Policy and Agreement with the Frederick County Department of Corrections**

1. The Frederick County Adult Detention Center is a local adult correctional facility operated by the Frederick County Department of Corrections (FCDOC).
2. The FCPS and FCDOC entered into an agreement that, upon notification by the Local Adult Correctional Facility (LACF), the FCPS Director of Special Education and Psychological Services, or designee, shall take reasonable steps to promptly obtain the student's educational records.
3. The *FCPS Policy 400-93, Incarcerated Youth with Disabilities-Educational Services* (Policy) states that the FCDOC is to contact the FCPS when a youth, up to age twenty-one (21) years, is incarcerated. The detainees are to be interviewed to determine if they received special education services while in school.
4. The Policy further indicates that reasonable steps will be taken by the FCPS to promptly obtain the student's records, including the IEP and supporting documents, from the previous public agency in which the student was enrolled.
5. The Policy also states that special education services will be initiated for students that have a current IEP and that, if the IEP cannot be implemented, the FCPS will ensure that an IEP team meeting occurs as soon as possible and all of the required steps are taken prior to conducting the IEP team meeting.
6. The FCPS Policy 400-93 states that students can refuse services.

#### **Student Subject of State Complaint**

7. On April 8, 2018, the student was detained at the FCDOC.
8. On May 16, 2018, the FCDOC contacted the FCPS via phone to share that the student was detained there and that he was identified as having a disability and in need of special education and related services
9. On May 29, 2018, an IEP team meeting was held with the student in attendance. The student's parent was not invited to the IEP team meeting.

10. The IEP that had been in effect required reading goals to increase the student's reading comprehension from a fourth grade to the fifth grade level by determining the meaning of words in text and identifying key ideas and details in informational text across curricular. The IEP also required math goals in calculation and problem solving from a fourth to fifth grade level and a written language goal to increase his formal style of writing using an editing checklist and peer/adult conference while attending to the form of conventional writing. The IEP also required social/emotional goals for behavior and self-management for coping and self-regulation skills.
11. The IEP also required three (3) hours daily for math and English provided primarily by the special education teacher, fifteen (15) hours per week of special education services within general education classes by the special education teacher, and forty (40) minutes weekly of counseling, crisis intervention, behavior management and social skills training.
12. On May 29, 2018, The IEP team determined that the student would receive three (3) hours a week of special education services to support reading comprehension, math calculation and written language goals on the IEP and forty (40) minutes of counseling weekly. The IEP team explained that the student will be provided with a special education teacher who will come into the detention center to work with him one-to-one for three (3) hours weekly. However, the IEP team did not document that this was the basis for reducing the IEP services and there was no discussion of the student's need to earn credits to progress through the general curriculum.
13. At the IEP team meeting there was a discussion of compensatory services for the services missed since April 9, 2018. The IEP team discussed twenty-four (24) hours of compensatory special education services and 320 minutes of compensatory counseling services to be provided to the student.
14. On June 4, 2018, the IEP team reconvened with participation by the student's mother to determine the student's services while being detained at FCDOC. The IEP team discussed the special educator would use the English 11 and Algebra II curriculum to implement the student's special education services to include reading, writing, and math goals on the IEP. The IEP team stated that this "would allow the student to access the general education curriculum to work towards gaining credits in these subject areas." The IEP team decided that the student would be provided with forty (40) minutes per week of therapeutic services to implement the social/emotional goals on the student's IEP. The IEP team discussed that if the student refuses services, the special education teacher will document his refusal.
15. The complainant expressed her disagreement with the decision, citing that the student's IEP required that the student receive eighteen (18) hours of services per week.

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The student's parent expressed that the student was interested in earning his Maryland High School Diploma and inquired about services to allow the student to obtain his Maryland High School Diploma while being incarcerated.

16. The IEP team discussed that they had not obtained the records from the XXXXXXXXX XXXX to determine the curriculum the student had been accessing and the student's progress on the classes he was taking.
17. While at the XXXXXXXXXXXXX, the student had been enrolled in the following classes and had received the following grades: English 11 (73%), Government (69%), Conceptual Chemistry (65%), Algebra II (69%) and Career & Technology Education (66%).
18. The FCPS Central Office Special Education staff report that the student is receiving fifteen (15) hours of special education services per week and accessing credit bearing courses for English 11 and Algebra II.
19. On June 21, 2018, the FCPS sent a letter to the Chief of Family Support and Dispute Resolution Branch acknowledging a violation in the provision of FAPE, as the student had been detained since April 8, 2018 and service decisions were not made until June 4, 2018. The violation was addressed by determining compensatory services.

### **DISCUSSION/CONCLUSIONS:**

Based on the Findings of Facts #3, #8, #13 and #14, the MSDE finds that the FCPS did not ensure that the student was located and offered a FAPE upon entry into the facility.

Specifically, based on the Findings of Facts #4, #6 - #9, #13 - #19, the MSDE finds that violations have occurred with respect to this aspect of the allegation for the following reasons:

1. Reasonable steps were not taken to promptly obtain the student's educational record from the XXXXXXXXXXXXX, consistent with the legal requirements and the school system's procedures;
2. The student's IEP was revised through the IEP team meeting that didn't include the parent and amended without agreement of the student's parent;
3. The student was not provided with the opportunity to continue to earn credit in courses to enable him to earn a Maryland High School Diploma; and
4. The FCPS Policy 400-93 inaccurately states that students can refuse services.

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## **CORRECTIVE ACTIONS/TIMELINES:**

### **Student-Specific**

The FCPS must provide documentation by September 1, 2018 that the IEP team, including the parent has reviewed and revised, as appropriate, the IEP to ensure that it addresses the student's need to progress through the general curriculum, consistent with the data. The IEP team must also determine the compensatory services to redress the loss of a Free Appropriate Public Education (FAPE) since June 4, 2018.

If the student has returned to the community, the FCPS must provide documentation of attempts to locate the student and offer to provide assistance in enrolling in an education program in the community. If the student is already enrolled in an education program in the community, the FCPS must provide documentation that it has offered compensatory services or other remedy for the violations identified.

### **Systemic**

The FCPS must provide documentation by October 1, 2018 that its Policy 400-93 has been revised to accurately reflect the requirements of Maryland law regarding the transfer of parental rights to students. The FCPS must also provide documentation of the steps taken to ensure that the identified violations do not recur and a description of how the school system will evaluate the effectiveness of the steps taken and monitor to ensure future compliance with the requirements.

## **TECHNICAL ASSISTANCE:**

Technical assistance is available to the parties through Dr. Nancy Birenbaum, Education Program Specialist, MSDE. Dr. Birenbaum may be contacted at (410) 767-0746.

Please be advised that complainant and the school systems have the right to submit additional written documentation to this office, which must be received within fifteen days of the date of this letter, if they disagree with the Findings of Facts 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. Pending the decision on a request for reconsideration, the school system must implement any Corrective Actions consistent with the timeline requirements as reported in this Letter of Findings.

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Questions regarding the Findings, Conclusions and Corrective Actions contained in this letter should be addressed to this office in writing. The student's mother and the school systems 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 complaint.

Sincerely,

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

MEF:sf

c :     XXXXXXXXXX  
          Theresa Alban  
          Linda Chambers  
          Carmen Working  
          Dori Wilson  
          Anita Mandis  
          Sharon Floyd

