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State Superintendent of Schools

January 31, 2019

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Ms. Rebecca Rider
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Baltimore County Public Schools
The Jefferson Bldg. 4th Floor
105 W. Chesapeake Avenue
Towson, Maryland 21204

RE: XXXXX
Reference: #19-080

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 December 13, 2018, the MSDE received a complaint from Grace Reusing, Esq., Office of the Public Defender, hereafter, “the complainant,” on behalf of the above-referenced student and Mr. XXXXXXX, the student’s grandfather, who serves as his parent under the IDEA. 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 allegation that 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 XXXXXX XXXXXXXXXXXXXXXX (XXXX) since September 2018, in accordance with 34 CFR §§300.2, .17, .101, .320, .324, Md. Code Ann., Educ. §7-103, and COMAR 13A.05.01.09.

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.

On June 5, 2018, the student was placed at the XXXX. The student has been enrolled in the education program at the XXXX, which is operated by the BCPS, since June 12, 2018.

FINDINGS OF FACTS:

General Information

1. The XXXX is a local adult correctional facility operated by the XXXXXXXXXXXXXXXX XXXXXXXXXXXX (XXXXX).
2. The BCPS has a written agreement with the XXXXXX 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 XXXX.
4. The BCPS utilizes a self-paced Blended Learning approach at the XXXXX, 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.
5. The BCPS currently has access to four (4) classrooms in the XXXXX 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 XXXX 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.
9. 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.
10. While the teachers have sufficient planning time during the day, and the BCPS reports that the special and general education teachers work together on the planning and evaluation of the effectiveness of the instruction provided, they currently do not document this collaboration.
11. 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 XXXX. 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.
12. There is documentation that the BCPS administers Statewide assessments at the XXXX. 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 XXXXX to have student participate in the IEP team meetings where transition planning occurs.

Student-Specific Information

14. On July 24, 2018, the IEP team met at the XXXX to review the IEP that was in effect for the student when he entered the facility, which was developed by the Maryland State Department of Education Juvenile Services Education (JSE) on January 25, 2018. That IEP required the provision of ten (10) hours of special education instruction per week in the general education classroom and thirty (30) minutes per month of counseling services in a separate special education classroom to assist him with achieving goals to improve reading, written language, math, and behavior skills.
15. When the student was placed at the XXXXX, he was taking English 9, United States history, biology, algebra I, Office Systems Management, and Career Research and Development courses at the JSE.
16. At the July 24, 2018 IEP team meeting, the IEP team documented that the student was enrolled in algebra I, health, and United States history classes, and was scheduled to receive six (6) hours of instruction per week at the XXXX. The IEP documents that teacher reports of the student's progress was limited because the student was new to the program and was refusing to attend classes. However, there is no documentation that the team considered positive behavioral interventions to address the student's interfering behavior.
17. At the July 24, 2018 IEP team meeting, the student's parent expressed concern that the student receive more class time and that counseling services be increased from monthly to weekly. The IEP team decided that the IEP goals remained appropriate and that the student would continue to receive the same amount of services. However, there is no documentation of the basis for the decision or documentation of how the team addressed the parent's concerns.
18. The student's Course Activity Scores Reports document that, at the start of the 2018-2019 school year, the student was taking English 9 and biology in addition to algebra I, health, and United States history at the XXXXXX.

19. On November 21, 2018, reports were made that the student was making sufficient progress on all of the IEP goals to achieve them by January 8, 2019. However, the information in the narrative of the reports does not explain the basis for the decision. Instead, it reiterates that the student is making progress and states that the student should continue working on the goals until they are met.
20. On December 6, 2018, the IEP team met at the XXXX to address the complainant's concerns about the student's education services. The team considered information from the complainant that the student was "way behind" in all courses except for history, that he has difficulty working on the same course for the two (2) to three (3) hour time periods during which instruction is provided, and that he requires more individualized instruction in order to keep pace with the coursework that must be completed. The complainant expressed concern that, at the rate that the student was progressing with his classes, he cannot earn the credits needed to keep up with the general curriculum.
21. The documentation of the December 6, 2018 IEP team meeting states that the BCPS staff reported that they "wish we could provide all students with more time, however we use the resources that XXXX provides." The team decided that the student would be provided with ten (10) hours and fifty (50) minutes of special education instruction in the general education classroom from a general education teacher, plus two (2) hours per week of special education instruction in a separate special education classroom from a special education teacher.

DISCUSSION/CONCLUSIONS:

Based on the Findings of Facts #1 - #13, 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 XXXX 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 #14 - #21, the MSDE further finds that the BCPS did not ensure that the student's IEP team considered the parent's and the complainant's concerns about the student's educational needs and lack of progress through the general curriculum, did not consider positive behavioral interventions to address the student's interfering behavior, and did not ensure that the student's IEP is based on the student's needs, in accordance with 34 CFR §§300.320 and.324. Therefore, this office finds that violations occurred.

CORRECTIVE ACTIONS/TIMELINES:

Student-Specific

The MSDE requires the BCPS to provide the following by March 1, 2019:

1. Data that supports any determination that the student achieved the annual IEP goals by January 8, 2019.
2. Documentation that the IEP team has considered the concerns of the parent and the complainant about the student's need for additional services and has reviewed and revised the IEP, as appropriate, consistent with the data regarding the student's needs, including any ongoing interfering behavior or any lack of achievement of the IEP goals and progress through the general curriculum that is found.
3. Documentation that the IEP team has determined the compensatory services or other remedy for the violations identified through this investigation. If there the BCPS 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 XXXX, the remedy must be designed to address the delay in implementation of those decisions as well.
4. 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 XXXXXXXX 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 receiving school.

System-Based

The MSDE requires that the BCPS provide documentation of the following:

1. By April 1, 2019, that steps have been taken to enforce the written agreement with the XXXXX in order to ensure that there is sufficient space and access to students at the XXX 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:

- a. That students receive at least 180 school days in a minimum of 1,080 school hours during a ten (1) month period;
 - b. That loss of educational services is not used as a consequence for behavior that does not result in an imminent security risk;
 - c. That 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;
 - d. That students are made available to participate in IEP team meetings where transition planning is being conducted; and
 - e. That students are made available to participate in Statewide assessments.
2. By the end of the 2018-2019 school year, that a procedural manual is developed and implemented to ensure the a FAPE is provided to students at the XXX 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:
- a. That there is sufficient staffing to provide students with special education instruction by the provider and in the placement required by the IEP;
 - b. That IEP teams consider positive behavioral interventions to address the interfering behaviors of students;
 - c. 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;
 - d. That IEP teams consider parent concerns and make decisions that are based on student needs and not the service delivery system;
 - e. 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 XXXX; and
 - f. 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.

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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 Early Intervention and Special Education Services

MEF:aam

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