



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

January 15, 2021

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Dr. Kathrine Pierandozzi
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RE: [REDACTED] and
Similarly-Situated Students
Reference: #21-034

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 students. This correspondence is the report of the final results of the investigation.

ALLEGATION:

On November 17, 2020, 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 similarly situated students. 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 students.

The MSDE investigated the allegation that the BCPS has not ensured that the students have been provided with a Free Appropriate Public Education (FAPE) while placed at the Baltimore County Detention Center (BCDC) since September 8, 2020, in accordance with 34 CFR §§300.2, .17, .101 - .323, as well as federal and State guidance. This guidance includes the United States Department of Education, Office of Special Education and Rehabilitative Services, *Supplemental Fact Sheet Addressing the Risk of COVID-19 in Preschool, Elementary and Secondary Schools While Serving Children with Disabilities Under IDEA During School Closures Due to the COVID-19 Pandemic*, dated March 21, 2020 and the MSDE *Technical Assistance Bulletin*,

Serving Children with Disabilities Under IDEA During School Closures Due to the COVID-19 Pandemic, dated March 30, 2020.

BACKGROUND:

The named student is nineteen (19) years old, is identified as a student with Multiple Disabilities, including an Intellectual Disability and an Emotional Disability, under the IDEA. The student has an Individualized Education Program (IEP) that requires the provision of special education and related services.

Since September 19, 2018, the named student has been placed at the BCDC. On March 16, 2020, there was a Statewide closure of all school buildings and initiation of virtual learning due to the national COVID-19 pandemic.

FINDINGS OF FACTS:

1. The BCDC is a local adult correctional facility operated by the Baltimore County Department of Corrections (Department of Corrections), where the education program is provided by the BCPS.
2. The named student's IEP requires the provision of twenty-one (21) hours of special education instruction and one (1) hour of counseling per week. The services are to assist the student in achieving goals to improve social interactions and self-management, math calculation and problem solving, written language mechanics, reading vocabulary and reading comprehension.
3. Since January 31, 2019, the MSDE has issued Letters of Findings reporting the results of IDEA investigations of allegations of the lack of provision of a FAPE to students with disabilities placed in the BCDC (State complaints #19-080, #19-084, #19-085, #19-088, #19-089, #19-090, and #19-092). In those Letters of Findings, this office reported conclusions that there is insufficient space, access to students, and staffing to ensure that students placed at the facility are provided with a FAPE that meets the State's standards and enables them to progress through the general curriculum and achieve annual IEP goals.
4. As a result of the previous investigations, the MSDE required the BCPS to take corrective action to ensure that the violations do not recur. One of the steps taken by the BCPS was to revise the Memorandum of Understanding (MOU) between the school system and the Department of Corrections. The current MOU specifically requires the BCPS and the Department of Corrections to work cooperatively to ensure the provision of education services to students with disabilities in accordance with the IDEA and Section 504 of the Rehabilitation Act of 1973. The MOU requires the Department of Corrections to allow the BCPS appropriate necessary access to students to provide them with education services and to provide the BCPS and students with a reasonably secure and safe environment for education.

5. The MOU further requires that disputes about the agreement be brought to the attention of the directors of the agencies to designate a representative to engage in fact finding and work cooperatively to resolve the dispute. If they are unsuccessful after sixty (60) calendar days, the MOU requires that procedures be followed for obtaining a mediator to assist.
6. The BCPS acknowledges that students with disabilities placed at the BCDC have not been provided with a FAPE that meets the State's standards and enables them to progress through the general curriculum and achieve annual IEP goals.
7. The BCPS reports that, while it instituted virtual learning for other students within the school system at the start of the school year, the Department of Corrections requested that the school system delay installation of the network needed to facilitate virtual learning due to an increase of positive COVID-19 cases in the facility. In the meantime, the BCPS provided the students at the BCDC with individualized learning packets to complete.
8. On October 9, 2020, the BCPS had networking equipment installed at the BCDC, and was prepared to begin virtual instruction at the facility on October 13, 2020.
9. There are electronic mail (email) messages that document that teachers reported that students were left unsupervised by the Department of Corrections when virtual instruction was initiated and that, as a result, students accessed unauthorized websites. Because the Department of Corrections refuses to provide correctional officer supervision of the students during virtual instruction sufficient to prevent the misuse of technology, virtual instruction was discontinued.
10. There is documentation that the BCPS and the Department of Corrections have met weekly to discuss the education services for students at the BCDC. A September 4, 2020 letter from the Department of Corrections to the complainant and emails between the agencies document that there has been disagreement between the agencies regarding the level of supervision required for students during virtual instruction and the respective agency's responsibilities for providing this supervision. However, there is no documentation that the BCPS has taken the steps to initiate mediation required by the MOU to resolve the dispute.

DISCUSSION/CONCLUSIONS:

Based on the Findings of Facts #1 - #10, the MSDE finds that the BCPS has not ensured that the named student and similarly situated students placed at the BCDC are being 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. Therefore, this office finds that a violation occurred with respect to the allegation.

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.¹

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.² Dr. Birenbaum can be reached at (410) 767-7770 or nancy.birenbaum@maryland.gov.

The MSDE requires the BCPS to provide documentation that it has initiated the mediation procedure required by the MOU to resolve the dispute with the Department of Corrections without further delay and that it is providing students with disabilities with the special education and related services required by each student's IEP.

The MSDE requires the BCPS to provide documentation that it has identified all students with disabilities at the BCDC during the 2020-2021 school year until the date when it begins offering students a FAPE. This includes each student who was placed at the BCDC but released from the facility prior to documentation of the initiation of a FAPE for students at the facility.

For each identified student, the BCPS must offer compensatory services as determined by an IEP team, or other remedy as agreed upon with the student or the student's parent, for the loss of a FAPE during the student's placement at the BCDC.

If an identified student is no longer participating in an education program and the BCPS is unable to obtain an agreement with the student or the student's parent as to the remedy to be provided, the BCPS must offer the student or the student's parent the opportunity to engage in mediation to assist in reaching an agreement. If there is no agreement to mediate or an agreement cannot be reached through mediation, the BCPS is required to request a due process hearing to demonstrate why its proposed remedy is appropriate.

¹ The United States Department of Education, Office of Special Education Programs (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.

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

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 students' parents 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

c:


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