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State Superintendent of Schools

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RE: [REDACTED] and
Similarly-Situated Students
Reference: #21-039

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 2, 2021, 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 did not ensure that the students were provided with a Free Appropriate Public Education (FAPE) while placed at the Baltimore County Detention Center (BCDC) from September 14, 2020 through November 20, 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 #20-01, *Serving Children with Disabilities Under IDEA During School Closures Due to the COVID-19 Pandemic*, issued March 2020, revised October 2020.

BACKGROUND:

The named student is sixteen (16) years old and is identified as a student with an Other Health Impairment (OHI) under the IDEA. The student has an IEP that requires the provision of special education and related services. While the time period for the allegation that was provided in the State complaint was September 14, 2020 to November 20, 2020, the student was placed at the BCDC from October 9, 2020 until November 19, 2020.

FINDINGS OF FACTS:

1. The BCDC is a local adult correctional facility operated by the Baltimore County Department of Corrections (BCDOC), where the education program is provided by the BCPS.
2. The named student's IEP has required twenty (20) hours of special education instruction per week and thirty (30) minutes of counseling services per week. The services are to assist the student in achieving goals to improve math, reading, writing and social emotional behavior.
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 the 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.
11. On January 15, 2021, the MSDE issued a Letter of Findings reporting the results of an investigation of State complaint #21-034 in which this office found that the BCPS is not ensuring a FAPE to students with disabilities placed at the BCDC. As a result, the BCPS has been required to take corrective action for all students impacted by the violation.

DISCUSSION/CONCLUSION:

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 have been provided with a FAPE that meets the State's standards and enable them to progress through the general curriculum and to achieve the annual IEP goals, in accordance with 34 CFR §§300.2, .17, .101,

.320, and .324, Md. Code Ann., Educ. §7-103, and COMAR 13A.05.01.09. Therefore, this office finds that a violation occurred.

Notwithstanding the violation, based on the Finding of Fact #11, the MSDE finds that corrective action has been required to remediate the identified noncompliance, and no additional action is required.

TIMELINE:

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.

The school system and the student's 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

MEF:ksa

c: [REDACTED] c/o Grace Reusing
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