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State Superintendent of Schools

June 23, 2021

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Maryland Department of Health




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Maryland Department of Health



RE:  and
Similarly-Situated Students
Reference: #21-091

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 and similarly-situated students. This correspondence is the report of the final results of the investigation.

ALLEGATIONS:

On April 26, 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 Maryland Department of Health (MDH) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to the above-referenced student and similarly-situated students.

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The MSDE investigated the following allegations:

1. The Maryland Department of Health (MDH) does not have policies and procedures in place to ensure that students with disabilities placed at the [REDACTED] [REDACTED] are evaluated and identified, and provided with a Free Appropriate Public Education (FAPE) since April 26, 2020, in accordance with 34 CFR §§300.2, .17, .101, .111, .320, and Md. Code Ann., Educ. §§8-412 and 22-201.
2. The MDH did not ensure that the named student was evaluated and identified and provided with a FAPE while placed at the [REDACTED] from April 26, 2020,¹ to September 10, 2020, in accordance with 34 CFR §§300.2, .17, .101, .111, .320, and Md. Code Ann., Educ. §§8-412 and 22-201.

BACKGROUND:

The student is nineteen (19) years old, and is identified as a student with a Specific Learning Disability, under the IDEA. The student has an IEP that requires the provision of special education and related services.

From April 26, 2020 to September 10, 2020, the student was placed at the [REDACTED] [REDACTED] ([REDACTED])

The student is currently placed at [REDACTED] a State correctional facility, where the education program is provided by the Maryland Department of Labor, Licensing & Regulation.

FINDINGS OF FACTS:

1. From April 26, 2020, to September 10, 2020, the student was placed at [REDACTED] by order of the Circuit Court for Baltimore County, in order to be provided with mental health treatment with the goal of attaining competency to assist in his defense in a delinquency proceeding. The MDH is the public agency responsible for the education program at the [REDACTED]
2. When the student arrived at [REDACTED] he was already identified as a student with a disability under the IDEA and had an IEP that was developed by the Baltimore County Public Schools (BCPS).

¹ The May 14, 2021 MSDE letter initiating this investigation inadvertently reflected the start date for the investigation period as January 27, 2020.

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3. There is no documentation that the student's IEP was implemented at [REDACTED] from April 26, 2020 to September 10, 2020.
4. There is no documentation of procedures to ensure that students with disabilities are identified, evaluated, and provided with a FAPE at [REDACTED]

CONCLUSIONS:

Allegation #1 Procedures to Ensure a FAPE

Based on the Finding of Fact #4, the MSDE finds that there are no procedures to ensure that students with disabilities are identified, evaluated, and provided with a FAPE at [REDACTED] in accordance with 34 CFR §§300.2, .17, 101, .111, .320, and Md. Code Ann., Educ. §§8-412 and 22-201. Therefore, this office finds that a violation occurred with respect to this allegation.

Allegation #2 Identification, Evaluation, and Provision of a FAPE to Student [REDACTED]

Based on the Findings of Facts #1 and #2, the MSDE finds that the student was already identified as a student with a disability when he was placed at the [REDACTED] and thus, the requirements to evaluate and identify the student do not apply. Therefore, the MSDE does not find a violation with respect to this aspect of the allegation.

However, based on the Findings of Facts #1 - #3, the MSDE finds that the student was not provided with a FAPE from April 26, 2020 to September 10, 2020, in accordance with 34 CFR §§300.101 and .323. Therefore, this office finds that a violation occurred with respect to this aspect of the allegation.

CORRECTIVE ACTIONS/TIMEFRAMES:

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.²

² 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.

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The MSDE has established reasonable timeframes below to ensure that noncompliance is corrected in a timely manner. This office will follow up with the public agency to ensure that it completes the required actions consistent with the MSDE Special Education State Complaint Resolution Procedures.

If the public agency anticipates that any of the timeframes below may not be met, or if either party 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. Dr. Birenbaum can be reached at (410) 767-7770 and nancy.birenbaum@maryland.gov.

Student-Specific

The MSDE requires the MDH to provide documentation that it has contacted the Maryland Department of Labor, Licensing & Regulation to arrange for an IEP team meeting for the named student and that the IEP team has determined the compensatory services or other remedy that the MDH will either provide or fund for the denial of a FAPE from April 26, 2020 to September 10, 2020.

Similarly-Situated Students

The MSDE requires the MDH to provide documentation that it has identified all similarly-situated students with disabilities placed at [REDACTED] since April 26, 2020.

For each student who is currently placed at [REDACTED] the MDH must provide documentation that it is implementing the student's IEP and that the IEP team has determined the compensatory services or other remedy for the loss of a FAPE to the student prior to the initiation of special education services in accordance with the student's IEP.

For each student who is no longer at [REDACTED] the MDH must provide documentation that it has made reasonable efforts to locate the student and to offer compensatory services or other remedy for the loss of a FAPE to the student while placed at [REDACTED]

System-Based

The MSDE requires the MDH to provide documentation that [REDACTED] has procedures in effect to ensure that students with disabilities are identified, evaluated, and provided with a FAPE.

Documentation of all corrective action taken is to be submitted to this office to: Attention: Chief, Family Support and Dispute Resolution Branch, Division of Early Intervention and Special Education Services, MSDE.

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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 public agency and the named 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
And Special Education Services

MEF:sf

c:



Dori Wilson
Anita Mandis
Sharon Floyd
Nancy Birenbaum