



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

June 23, 2021

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Juvenile Protection Division
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Ms. Deborah Grinnage-Pulley
Executive Director, Juvenile Services Education System
Maryland State Department of Education
200 West Baltimore Street
Baltimore, Maryland 21201

Re: [REDACTED]
Reference: #21-097

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 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. In that correspondence, the complainant alleged that the Maryland State Department of Education Juvenile Services Education System (JSES) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to the above-referenced student.

The MSDE investigated the allegation that the JSES has not ensured that the student has been provided with a Free Appropriate Public Education (FAPE) while placed at the [REDACTED] [REDACTED] from September 8, 2020 to October 19, 2020, [REDACTED] [REDACTED] from October 19, 2020 to December 2, 2020, and [REDACTED] [REDACTED] from December 2, 2020 to December 15, 2020, and [REDACTED] [REDACTED] from February 9, 2021 to March 24, 2021, in accordance with 34 CFR §§300.2, .17, .101, .323, and .324, as well as federal and State guidance.

¹ [REDACTED] is a facility for girls located on the campus of [REDACTED] [REDACTED].

BACKGROUND:

The student is seventeen (17) years old and is identified as a student with an Emotional Disability under the IDEA. She has an IEP that requires provision of special education instruction and related services.

FINDINGS OF FACTS:

1. During the time periods covered by the investigation, the student has been placed by the Maryland Department of Juvenile Services (DJS) in its facilities as follows:
 - September 8, 2020 to October 19, 2020 – [REDACTED]
 - October 19, 2020 to December 2, 2020 – [REDACTED]
 - December 2, 2020 to December 15, 2020 - [REDACTED]
 - December 15, 2020 to February 9, 2021 – [REDACTED] and,
 - February 9, 2021 to March 24, 2021 – [REDACTED]
2. The JSES is responsible for the education of students placed in the DJS facilities.
3. An April 6, 2020 letter, from the JSES to parents of students placed in the DJS facilities, reflects that during the COVID-19 pandemic, JSES was providing special education instruction through virtual learning and related services through telehealth.
4. There is documentation in the form of a DJS directive that, since the onset of the COVID-19 pandemic, upon entry to each DJS facility, the DJS has placed students in quarantine for approximately fourteen (14) days for health and safety reasons in order to stop the spread of the virus. The documentation reflects that, in addition, the DJS has identified housing units and other spaces that are appropriate for the safe isolation of a student who displays symptoms or tests positive for COVID-19. These spaces are designed to ensure that students' medical needs are met and to limit facility-wide exposure. While a student is placed in quarantine, the DJS does not provide the JSES with face-to-face access to students.

September 8, 2020 to October 19, 2020 – [REDACTED]

5. There are special education teacher logs and accommodations logs that reflect that the student was provided with the supports required by the IEP during this time period.
6. The teacher and student schedules reflect that the student was scheduled to attend four (4) blocks of classes during the school day.
7. There is documentation that the student was provided with counseling as required by her IEP. The service log notes indicate that the student was struggling with motivation to complete assignments and was provided guidance in this area by her counselor. The transition specialist notes reflect that the student was struggling emotionally, which was affecting her learning.

October 19, 2020 to December 2, 2020

8. There is contact log information that the IEP case manager spoke with the student's parent on October 21, 2020, to inform her that school instruction was being presented virtually through an electronic device that was provided to the student. She further informed the student's parent that general and special educators were available online during teacher led instruction and that there was a teacher in the classroom as well.
9. An IEP team meeting was held on November 6, 2020, to address the student's lack of academic progress, and make revisions to the IEP, as necessary. The IEP team stated that the student was not progressing in math and social studies due to her struggles with self-management and self-control. The IEP team proposed initiating a task list to assist the student with completing assignments, and using positive reinforcement and relationship building to assist with the student's behavioral issues.
10. The student's annual review was conducted on November 30, 2020. It was noted that the student continued to struggle academically due to her behavioral issues, but was beginning to ask for assistance and make progress. Because the student preferred utilizing printed materials to access instruction, the IEP team added notes, outlines and the use of highlighters to the student's accommodations. The team noted that the student was receiving a hybrid model of instruction, with teacher led instruction online, along with a supporting teacher in the physical classroom.
11. There is documentation that the student's case manager met with the student to provide support on October 23, 2020, November 18, 2020, and November 24, 2020.
12. The case manager's notes reflect that meetings with the case manager were conducted virtually and during those meetings the case manager addressed the student's academic concerns by providing strategies for learning and clarification of the opportunities for accessing additional guidance. The student expressed a desire to be provided with hard copy assignments, rather than use the assigned digital device and the case manager provided assistance with that request.
13. The electronic communications (email) among the JSES staff members document that the facility had internet interruptions beginning October 28, 2020. The JSES Information Technology (IT) team was notified and the issue was repaired on November 6, 2020. During that time period, the students were provided with printed instructional materials.
14. The service log records document that the student was provided with counseling as required by her IEP during this time period.
15. The teacher logs detailing the provisions of supports document that the student was provided with the accommodations and supports required by the IEP during this time period.

December 2, 2020 to December 15, 2020

16. The student was transferred to this facility specifically for medical quarantine.

17. An email between the principal of the facility and a JSES staff member, as well as school logs, document that, upon the student's arrival at the facility, the student's school records were requested and, subsequent to the receipt of those records, the student was provided with academic work aligned with her schedule from her previous facility. The student was also provided with a digital device for learning on December 3, 2020 as well as a "jump drive" that contained recorded lessons. Additionally, there were several days on which the student was experiencing a mental health crisis, and did not access her academic devices.
18. The case manager notes indicate that, on December 4, 2020, the student reported difficulty with viewing the "jump drive" materials and staff were able to address this technology issue.
19. The special education case manager logs document that the student met virtually with a special educator on December 4, 2020, December 8, 2020, December 9, 2020, December 10, 2020, and December 14, 2020 and December 15, 2020.

December 15, 2020 to February 9, 2021 [REDACTED]

20. The special education case manager's log reflects that the student's case manager met with the student on December 17, 2020, January 22, 2021, and February 1, 2021.
21. The counseling service log documents that the student was provided with counseling as required by her IEP during this time period.
22. The teachers maintained a log of the provision of daily accommodations, which documents that the student was provided with the accommodations and supports required by the IEP during this time period.

February 9, 2021 to March 24, 2021 [REDACTED]

23. There is service log documentation between February 9, 2021 and February 23, 2021 that, while the student was in quarantine, materials were printed out and provided to the student, with support offered via virtual meeting. However, the documentation indicates that the student refused both the work and the support.
24. There is service log documentation dating from February 23, 2021 to March 1, 2021 that the student refused to attempt school work or accept the special education support provided. There is also documentation that the student requested printed materials as opposed to online instruction, which were provided to her. However, the documentation reflects that the student refused to use the printed materials, as well, and did not avail herself of the efforts of the special education teacher to assist.
25. The service log documentation reflects that on March 2, 2021 and March 3, 2021, the student was on unit restriction due to non-compliant behavior in the classroom. The student was provided with printed instructional materials and offered support via virtual meeting and/or telephone, however, the student refused to attempt any assignments.

26. The documentation indicates that, from March 4, 2021 to March 9, 2021, the student continued to refuse to attempt assignments or access special education supports in the classroom once off of unit restriction.
27. The special educator notes, dated March 9, 2021, reflect that there was an incident involving non-compliant student behavior in the classroom on that date. The student was placed on unit restriction from March 10, 2021 to March 17, 2021, but was provided with instructional materials as well as access to special education support.
28. On March 11, 2021, the special education case manager spoke with the student's parent by telephone to relate the student's recent behavioral concerns and to gather parental input and suggestions for motivating the student. The case manager initiated an IEP team meeting and sent an IEP team meeting invitation for March 30, 2021 to the parent in order to discuss the student's behavior concerns.
29. There is service log documentation dating from February 18, 2021 to March 23, 2021 that the student refused to attempt school work in the classroom or accept the special education support provided.
30. The special educator contact logs from this time period, reflect that attempts were made to assist the student with behavior and academic support; however, the student did not attend the scheduled meetings.
31. There are counselor log notes that reflect that the student met with the counselor on February 23, 2021, but refused to attend subsequent sessions.
32. There are logs reporting the provision of required IEP accommodations dated from February 10, 2021 to March 23, 2021.
33. On March 24, 2021 the student was transferred from [REDACTED] to a psychiatric inpatient facility in Baltimore County for treatment with the expectation that she would be returning to the facility.
34. On March 30, 2021, the IEP team convened to develop a plan to address the student's behavioral concerns. The IEP team reviewed the recent incidents of behaviors leading to self-harm in both the classroom setting and in the unit. The team conducted an informal assessment, which was reviewed by the staff psychologist. The IEP team determined that the student's behavioral needs would be addressed through the support of a psychologist, instead of a counselor, to respond to the increasing intensity of behaviors being exhibited by the student.

DISCUSSION/CONCLUSION:

In this case, the complainant alleges that, during the COVID-19 pandemic, the student experienced difficulties with assigned work during virtual instruction, accompanied by a lack of teacher support. Additionally, the complainant alleges that technical issues prevented the student from accessing the assigned work.

Based on the Findings of Facts #1 - #34, the MSDE finds that the documentation does not support the allegation and further finds that the student's lack of progress was related to her interfering behaviors and mental health issues, in accordance with 34 CFR §§300.2, .17, .101, .323, and .324, as well as federal and State guidance. Therefore, this office does not find that a violation occurred.

TIMELINE:

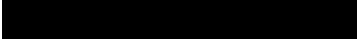

As of the date of this correspondence, this Letter of Findings is considered final. This office will not reconsider the conclusions reached in this Letter of Findings unless new, previously unavailable documentation is submitted and received by this office within fifteen (15) days of the date of this 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. 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 parties 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 Free Appropriate Public Education (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/dee

c:  c/o Grace Reusing, Esq.
Lindsey Goodrich
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