



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

March 10, 2020

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Ms. Rebecca Rider  
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RE: [REDACTED] and  
Similarly-Situated Students  
Reference: #20-089

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.

**ALLEGATIONS:**

On January 16, 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 student.

The MSDE investigated the following allegations:

1. The BCPS has not ensured that the students have 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 them to

progress through the general curriculum while placed at the [REDACTED] [REDACTED] since September 4, 2019, in accordance with 34 CFR §§300.2, .17, .101, .320, .324, Md. Code Ann., Educ. §7-103, and COMAR 13A.05.01.09.

2. The BCPS has not ensured that the students have been provided with the special education instruction and related services in the educational placement required by the IEP since September 4, 2019, in accordance with 34 CFR §§300.101 and .323.
3. The BCPS has not ensured that the students and their parents have the opportunity to participate in IEP team meetings, in accordance with 34 CFR §§300.321 and .322.

### **BACKGROUND:**

The named student is eighteen (18) years old, is identified as a student with an Emotional Disability under the IDEA, and has an IEP that requires the provision of special education and related services.

On June 5, 2019, the named student was placed in the [REDACTED] and has been enrolled in the education program, which is operated by the BCPS, since June 14, 2019.

### **FINDINGS OF FACTS:**

#### **General Information**

1. The [REDACTED] is a local adult [REDACTED] facility operated by the Baltimore [REDACTED] [REDACTED]. When students are placed at the [REDACTED] the [REDACTED] requires them to remain in a holding area for four (4) days before being assigned to a housing unit.
2. The BCPS has a written agreement with the [REDACTED] that requires the BCPS to provide education services in the facility and requires the [REDACTED] to permit the BCPS to provide the required education services to students in the facility. It requires the BCPS and the [REDACTED] 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. On January 31, 2019, the MSDE issued a Letter of Findings as a result of the investigation conducted into allegations of violations of the IDEA and related State requirements for another student placed at the [REDACTED] (State complaint #19-080). As a result of that investigation, the MSDE found the following:
  - a. The BCPS utilizes a self-paced Blended Learning approach at the [REDACTED] 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 (the APEX program). While there is text-to-speech capability with the APEX program, teachers need to be available to adapt the content, methodology, or delivery of instruction provided to students who have difficulty with reading in order to ensure that they understand the material. The teacher assigned to social studies and science is certified in both the course content and special education. However, the BCPS does not document collaboration between other general education teachers and a special education teacher on the planning and evaluation of the effectiveness of the instruction provided.

- b. The BCPS currently has access to four (4) classrooms in the [REDACTED] 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.
- c. 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.
- d. 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.
- e. The students placed at the [REDACTED] are first assigned temporary housing in “general holding.” While in “general holding,” students are not permitted to attend class until they are assigned housing in a “tier.” While the students are placed in

“general holding,” the BCPS staff obtain information from them about previous school attendance and begin the school enrollment process at the facility.

- f. 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 [REDACTED]. 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.
- g. The [REDACTED] 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 [REDACTED] 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 10<sup>th</sup> day of withholding of services by the [REDACTED] and there is no process in place for ensuring that the BCPS can provide all of the protections.
- h. 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.
- i. There is documentation that the BCPS administers Statewide assessments at the [REDACTED]. 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 [REDACTED] makes each student available, as appropriate, for participation in assessments that are administered at the facility.

- j. There is documentation that the BCPS conducts transition planning at the [REDACTED]. 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 reports that they have been unsuccessful in obtaining permission from the [REDACTED] to have student participate in the IEP team meetings where transition planning occurs.
4. As a result of the investigation of State complaint #19-080, the BCPS was required to take system-based corrective action. This action includes the following:
    - a. Steps have been taken to enforce the written agreement with the [REDACTED] in order to ensure that there is sufficient space and access to students at the [REDACTED] 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:
    - b. Students receive at least 180 school days in a minimum of 1,080 school hours during a ten (1) month period;
    - c. The loss of educational services is not used as a consequence for behavior that does not result in an imminent security risk;
    - d. 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;
    - e. Students are made available to participate in IEP team meetings where transition planning is being conducted;
    - f. Students are made available to participate in Statewide assessments; and
    - g. A procedural manual is developed and implemented to ensure the a FAPE is provided to students at the [REDACTED] 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:
      - i. That there is sufficient staffing to provide students with special education instruction by the provider and in the placement required by the IEP;
      - ii. That IEP teams consider positive behavioral interventions to address the interfering behaviors of students;
      - iii. 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;

- iv. That IEP teams consider parent concerns and make decisions that are based on student needs and not the service delivery system;
  - v. 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 [REDACTED] and
  - vi. 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.
5. The BCPS is dependent upon the cooperation of the [REDACTED] to provide appropriate access to students and space for instruction in order to complete the above actions. While the BCPS has made efforts to obtain the cooperation of the [REDACTED] in order to complete these actions, those efforts have been unsuccessful.
6. The BCPS has held IEP team meetings at the Central Office instead of the [REDACTED] to make it easier for parents to participate. However, students are not permitted to leave the [REDACTED] and therefore, were unable to participate in meetings held at the Central Office. In response to concerns raised about ensuring student participation in IEP team meetings, the BCPS has also held IEP team meetings at the [REDACTED]. However, the [REDACTED] does not permit parent participation by alternative means, such as teleconference, when they are unable to participate in person at the facility. Therefore, the BCPS has been unable to ensure that both parents and students can participate in IEP team meetings at the same time.

## **The Named Student**

### Student Records

7. The documentation reflects that the student was enrolled in the education program at the [REDACTED] on June 14, 2019, and that the [REDACTED] Enrollment Interview Form reflects that he reported that the last school he attended was [REDACTED] ([REDACTED]) in the Baltimore City Public Schools.
8. The BCPS contact log and emails reflect that attempts were made to contact [REDACTED] for the student's educational record on June 14, 2019, June 17, 2019, July 2, 2019, and July 9, 2019.

9. There is an email correspondence from the Baltimore City Public Schools staff to the BCPS staff, dated July 10, 2019, which documents that the BCPS was provided with the student's educational record from [REDACTED] and was informed that the last school the student attended by at the [REDACTED]
10. The BCPS contact log, emails between the BCPS staff to the Baltimore City Public Schools staff, and a Consent for Release of Records document that, on July 16, 2019, the BCPS requested and received the student's educational record from the [REDACTED]. The email from the Baltimore City Public Schools states the student "didn't attend [REDACTED] to receive grades."
11. The student's transcript and report card from the [REDACTED] reflect that the student has been placed in classes at the [REDACTED] that he requires in order to earn a Maryland High School Diploma.
12. The IEP that was obtained by the BCPS was dated April 13, 2016, and was developed by [REDACTED] in Baltimore County. The IEP required twelve and one-half (12.5) hours of special education instruction per week in a separate special education classroom for reading, math, and science. It required seven and one-half (7.5) hours of special education instruction per week in the general education classroom in all other academic areas. It also required one (1) hour per month of psychological services from a psychologist and one-half (.5) hour per year of career and technology education.

#### IEP Implementation

13. There is documentation that on July 8, 2019 and September 3, 2019, both general and special education teachers were informed of the requirements of the IEP. However, there is no documentation that a psychologist was provided with the IEP.

#### September 17, 2019 IEP Team Meeting

14. On September 3, 2019, the BCPS issued a written invitation to the student's parent for an IEP team meeting to be held on September 17, 2019 at the BCPS Central Office for the purpose of conducting reevaluation, reviewing and revising the IEP, and conducting transition planning. The contact log documents that the school staff left telephone messages for the student's mother on September 12 and 13, 2019 to remind her of the meeting.
15. The IEP team documented that the parent did not participate in the meeting, but that the student did participate. The team recommended that psychological and educational assessments be conducted, as well as a classroom observation, and the student's mother provided written consent on September 26, 2019.
16. At the September 17, 2019 IEP team meeting, the team discussed that the student had earned only seven (7) credits towards graduation. The team documented that the student

demonstrated lack of motivation to engage in academic tasks and exhibited work and school refusal. Based on this information, the team revised the social, emotional, behavioral goal from complying with school rules to remaining on task to complete work. The IEP required positive behavioral interventions to address the student's interfering behavior.

17. The IEP team documented that, based on information from the student's performance when he did attend class, he was not demonstrating difficulty with reading, but was struggling with writing. Therefore, the team discontinued the goal to improve reading comprehension and added a goal to improve writing skills. In addition, the IEP team documented the decision to provide special education instruction in the general education classroom "as [the student] is now at the [REDACTED] which offers a smaller class size and more structured environment." The team documented that the student requires twenty-five (25) hours of special education instruction per week, to be provided for two (2) hours per day, and for three (3) hours each evening, five (5) days per week.

#### IEP Implementation

18. There is no documentation that teachers and a psychologist were provided with the IEP that was revised on September 17, 2019.

#### December 3, 2019 IEP Team Meeting

19. The IEP team, including the student, reconvened on December 3, 2019 and considered the evaluation data. The student's parent did not participate and the team documented that she was not provided with the opportunity to do so because the [REDACTED] would not permit her to participate by teleconference.
20. At the December 3, 2019 IEP team meeting, the team considered the report of the results of the psychological assessment, which states that the student's cognitive ability and his ability to sustain attention, concentrate, and exert mental control were within the "borderline" range. The report contains a recommendation for counseling for the student to develop coping strategies to handle situations appropriately and without conflict and to adjust his environment to avoid stress, frustration, and anger.
21. The IEP team also considered the report of the results of an educational assessment that states that the student performed in the "low average to average" range in broad reading, mathematics, and written expression, and the areas in which he struggles the most are calculation and fluency "across all the academic cluster areas with the exception of math fluency."



22. The report of the classroom observation that was conducted identified problems in the areas of attention and motivation.
23. The teachers reported that the student had not made sufficient progress towards achieving the annual IEP goals due to lack of school attendance.
24. Based on the data, the team determined that the student continues to meet the criteria for identification as a student with an Emotional Disability under the IDEA. The team added a goal for the student to improve school attendance and required the provision positive behavior strategies to assist him with achieving the goal.

#### IEP Implementation

25. There is documentation that on December 13, 2019, both general and special education teachers were informed of the requirements of the IEP. However, there is no documentation that a psychologist was provided with the IEP.
26. On January 24, 2020, reports were made on the progress towards achievement of the annual goals. The reports state that the student is making sufficient progress on all of the goals. The report on the goal to improve school attendance indicates that, with encouragement from a teacher, the student is agreeing to attend school fifty percent (50%) of the time.
27. There is documentation that the named student has participated in Statewide assessments while placed at the [REDACTED]

#### DISCUSSION/CONCLUSIONS:

##### **Allegation #1 Provision of a FAPE that Meets the State's Standards**

Based on the Findings of Facts #7 - #12 and #14 - #17, the MSDE finds that the BCPS took appropriate steps to obtain the student's educational record and to review and revise the IEP without delay to ensure that it addressed his current needs once it was received, in accordance with 34 CFR §§300.323 and .324. In addition, based on the Findings of Facts #14 - #17 and #20 - #24, the MSDE finds that there was data to support the IEP team's decisions about the student's program and placement, in accordance with 34 CFR §300.324.

However, based on the Findings of Facts #1 - #5, #12, and #17, the MSDE finds that the BCPS has insufficient access to students to ensure that the named student and similarly-situated students placed at the [REDACTED] are provided with a FAPE that meets the State's standards to enable them to progress through the general curriculum and to achieve the annual IEP goals, 34 CFR §§300.1, .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.

**Allegation #2 IEP Implementation**

Based on the Findings of Facts #1 - #5, #12, #13, #17, #18, and #25 - #27, the MSDE finds that, while there is documentation that the student has been provided with special education instruction to address the annual IEP goals and has participated in assessments, there is no documentation that the BCPS has ensured that he has been provided with the amount of special education instruction and related services required by the IEP since September 4, 2019, in accordance with 34 CFR §§300.101 and .323. Therefore, this office finds that a violation occurred.

**Allegation #3 Participation in IEP Team Meetings**

Based on the Findings of Facts #6, #15, and #19, the MSDE finds that there is no documentation that the BCPS has ensured that both the named student and similarly-situated students and their parents can participate in IEP team meetings since September 4, 2019, in accordance with 34 CFR §§300.321 and .322. Therefore, this office finds that a violation occurred.

**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.

The MSDE has established a reasonable timeframe below to ensure that noncompliance is corrected in a timely manner.<sup>1</sup> 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 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.<sup>2</sup> Dr. Birenbaum can be reached at (410) 767-7770.

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<sup>1</sup> 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.

<sup>2</sup> The MSDE will notify the public agency's Director of Special Education of any corrective action that has not been completed within the established timeframe.

The MSDE requires that the PGCPs provide documentation by the end of the 2019-2020 school year of the steps taken to ensure that the violation does not recur at Potomac High School.

### **Named Student**

The MSDE requires the BCPS to provide monthly reports on the student's status at the [REDACTED]. Upon notice of the student's upcoming release from the [REDACTED] the BCPS must offer assistance with enrollment into another education program for up to one year from his date of release or until he is no longer eligible for an education program under the IDEA, whichever comes first.

If the student is not entitled to continued education under the IDEA upon his release from the [REDACTED] or if with parental agreement, he chooses not to enroll in another education program, the BCPS must offer to pay for a job training program of the student's choice if he identifies such a program within one year of his release from the [REDACTED].

### **Similarly-Situated Students and System-Based**

As a result of the investigation of State complaint #20-088 completed on (insert date), the MSDE identified the same violations identified through this investigation. The MSDE has required the BCPS to take student and system-based corrective action to remediate the violations. Therefore, no additional corrective action is required as a result of the same identified violations.

Documentation of completion of the 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.

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 timeframes reported in this Letter of Findings.


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The parent and the school system 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 Special Education/Early Intervention Services

MEF:aam

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