



July 19, 2012

Amy Walters, Esq.
Maryland Disability Law Center
1500 Union Avenue
Baltimore, Maryland 21211

Ms. Kalisha Miller
Director of Special Education
Baltimore County Public Schools
6901 Charles Street
Towson, Maryland 21204

RE: XXXXX
Reference: #12-092

Dear Parties:

The Maryland State Department of Education (MSDE), Division of Special Education/Early Intervention Services (DSE/EIS), 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 May 23, 2012, the MSDE received a complaint from Amy Walters, Esq. of the Maryland Disability Law Center, hereafter, “the complainant,” filed on behalf of the above-referenced student. 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 student’s Individualized Education Program (IEP) has been implemented since his detention at the Baltimore County Detention Center (BCDC) on January 30, 2012, in accordance with 34 CFR §§300.101, .103 and .323. Specifically, the allegation is that:
 - a. the student was not provided with services comparable to those required by his IEP upon his placement at the BCDC until the date of the IEP team meeting on March 30, 2012;

- b. the student was not provided with special education instruction on two (2) days during periods of lock-down at the BCDC; and
 - c. the student has not received special education instruction in areas other than English.
2. The BCPS has not followed proper procedures in reviewing and revising the IEP to ensure that it is based on the student's identified needs, in accordance with 34 CFR §300.324.

INVESTIGATIVE PROCEDURES:

1. Ms. Christine Hartman, Education Program Specialist, MSDE, was assigned to investigate the complaint.
 2. On May 23 and 24, 2012, the MSDE sent a copy of the complaint, via facsimile, to Ms. Kalisha Miller, Director of Special Education, BCPS; Ms. Sharon Floyd, Supervisor of Compliance, BCPS; Ms. Pamela Weitz, Compliance Support, Office of Special Education, BCPS; and Mr. Stephen Cowles, Legal Counsel, BCPS.
 3. On June 6, 2012, Ms. Hartman conducted a telephone interview with the complainant to clarify the allegations to be investigated. On the same date, the MSDE sent correspondence to the complainant that acknowledged receipt of the complaint and identified the allegations subject to this investigation. In addition, the MSDE notified the BCPS of the allegations and requested that the BCPS review the alleged violations.
 4. On June 27, 2012, Ms. Hartman and Ms. Anita Mandis, Section Chief, Complaint Investigation Section, Complaint Investigation and Due Process Branch, MSDE, conducted a site visit at the BCPS Central Office to review the student's educational record, and interviewed the following BCPS staff:
 - A. Ms. Constance Dean, Coordinator, Office of Special Education, BCPS;
 - B. Ms. Cori Dennis, Resource Teacher, BCPS;
 - C. Mr. Andrew Pariser, Coordinator, Alternative Education, Dropout Prevention and Summer School, BCPS; and
 - D. Mr. Dale Rauenzahn, Executive Director, Student Support Services, BCPS.
- Ms. Miller attended the site visit as a representative of the BCPS and to provide information on the BCPS policies and procedures, as needed.
5. On July 11, 2012, Ms. Hartman requested additional information from the BCPS relating to the allegations contained in the complaint.

6. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
 - A. IEP, dated December 2, 2011;
 - B. IEP, dated March 30, 2012;
 - C. Correspondence from the Superintendent's Designee to the student and the student's parent, dated June 21, 2012;
 - D. Invitation to the student's parent to attend the March 30, 2012 IEP team meeting, dated March 19, 2012;
 - E. IEP Team Development Summary for the March 30, 2012 IEP team meeting;
 - F. The BCDC's Policy 5.1.01, dated March 27, 2009;
 - G. Memorandum from the BCDC staff to the BCPS staff, dated January 5, 2007;
 - H. Student work samples in English and History;
 - I. The student's report card for the 2011-2012 school year; and
 - J. The student's transcript for the courses completed through the 2011-2012 school year.

BACKGROUND:

The student is seventeen (17) years old and is identified as a student with a specific learning disability under the IDEA. From January 30, 2012 to June 4, 2012, the student was detained by the Circuit Court for Baltimore County at the Baltimore County Detention Center (BCDC) pending trial on criminal charges (Docs. a and b, and interviews with the complainant and the BCPS staff).

Prior to his detainment at the BCDC, the student had been disciplinarily removed from his school of enrollment, XXXXXXXXXXXXXXXX in the BCPS. Following his detainment at the BCDC, the student was released into the community. As a result of the student's disciplinary removal from XXXXXXXXXXXXXXXX, the BCPS has placed the student at the XXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXX, a BCPS XXXXXXX, where he is assigned to attend school at the start of the 2012-2013 school year (Docs. a and c, and interviews with the complainant and the BCPS staff).

During the time period covered by this investigation, the student's mother, who continues to serve as the student's parent under the IDEA, was provided with the opportunity to participate in the educational decision-making process and with written notice of the procedural safeguards (Docs. b, d and e, and review of the student's educational record).

FINDINGS OF FACTS:

Provision of Special Education Services at the BCDC

1. The BCDC is a local adult correctional facility operated by the Baltimore County Department of Corrections (*See*, <http://www.baltimorecountymd.gov/Agencies/corrections/index.html>).

2. The BCPS staff reports that students detained or incarcerated at the BCDC are provided with four (4) hours of special education instruction per week in a general education classroom by a special education teacher. Students are typically provided with instruction in two (2) courses at a time. School staff reviews each student's educational record for the courses the student requires in order to graduate, and determines the courses to be provided to each student based on this information. The BCPS staff reports that the amount and nature of instruction provided to students is based on the amount of time that the BCDC staff allows students to attend class and the amount of space the facility provides to the BCPS for classroom instruction. The BCPS staff further reports that, although less instruction is provided in a general education environment, it is comparable to the instruction the students receive at school because it is provided in small classes where students complete work in their individual course areas and have access to one-to-one support from the teacher (Interviews with the BCPS staff).
3. The BCDC's Policy 5.1.01 states that, in order to ensure safety and security within the facility, the BCDC Shift Commander has the authority to prohibit students from attending class or accessing any other services when a disturbance at the facility is suspected or is in the process of occurring. This process is known as "lockdown" (Docs. f and g, and interviews with the BCPS staff).
4. In a memorandum to the BCPS, dated January 5, 2007, the BCDC informed the BCPS staff that, during periods of "lockdown," instruction is put "on hold," but stated that "materials may be provided" to a student during the period of "lockdown" upon request to the Shift Commander (Doc. g).
5. The BCPS staff reports that students are not provided with class material to work on during periods of "lockdown" because the BCDC staff does not permit the provision of educational services during these periods of time. There is no information or documentation that the BCPS staff has contacted the Shift Commander to request that students be provided with instructional materials when they are restricted to a specific area of the facility during "lockdown," consistent with the BCDC procedures (Interviews with the BCPS staff).

Provision of Special Education Services to the Student

6. From January 30, 2012 to June 4, 2012, the student was detained at the BCDC while awaiting trial on criminal charges (Interviews with the complainant and the BCPS staff).
7. The IEP in effect prior to the student's detention at the BCDC required the provision of eighteen (18) hours per week of special education instruction in both general education and separate special education classes by general education and special education teachers in order to assist the student in achieving annual goals in reading, math and written language (Doc. a).

8. On March 30, 2012, an IEP team meeting was convened to revise the IEP to reflect the amount and nature of instruction provided to students at the BCDC (Doc. b, and interviews with the BCPS staff).
9. This student was provided with four (4) hours per week of special education instruction in a general education classroom in English 11 and United States history during his detainment at the BCDC. There is documentation that the student earned high school credit for these courses (Docs. h – j, interviews with the BCDC staff, and review of the student’s educational record).
10. There is no documentation that the student received instruction to assist him in achieving the annual goal in math (Review of the student’s educational record).
11. During the time period that the student was detained at the BCDC, he missed five (5) days of instruction as a result of the BCDC’s “lockdown” procedures (Interviews with the BCPS staff and review of the student’s educational record).

DISCUSSION/CONCLUSIONS:

Responsible Public Agency

A “public agency” is defined as a State or local government responsible for the provision of a Free Appropriate Public Education (FAPE) to students with disabilities. In Maryland, public agencies are defined as local school systems, as well as certain other State agencies. Also in Maryland, each local school system is required to provide special education and related services to students with disabilities detained or incarcerated in local adult correctional facilities located within the jurisdiction of the local school system (34 CFR §300.33; and COMAR 13A.05.01.03B(59) and 13A.05.01.09C).

Based on the Findings of Facts #1 and #6, the MSDE finds that the BCPS is the public agency responsible for providing a FAPE to students with disabilities detained or incarcerated at the BCDC.

Allegation #1: Implementation of the IEP

The public agency is required to ensure that students are provided with the special education and related services required by the IEP in order to assist the student in achieving the annual goals of the IEP. This includes students with disabilities detained in adult correctional facilities (34 CFR §§300.2, .101, and .103).

If a student with an IEP transfers to a public agency in another state or another jurisdiction within the same state, the new public agency (in consultation with the parents) must provide the student with a FAPE, including services comparable to those described in the student’s IEP from the previous state, until the new public agency:

- a. Conducts an evaluation if determined to be necessary; and
- b. Develops, adopts, and implements a new IEP, if appropriate (34 CFR §300.323).

“Comparable services” is defined as services that are similar or equivalent to those that are described in the IEP from the previous public agency, as determined by the IEP team in the new public agency (Analysis of Comments and Changes to the IDEA, *Federal Register*, Vol. 71, No. 156, p. 46681, August 14, 2006).

Comparable Services Prior to Revision of the IEP

Based on the Findings of Facts #2 and #6 – #10, the MSDE finds that the BCPS does not ensure that comparable services are determined by the IEP team, and that, as a result, the student was not provided with special education instruction that was similar or equivalent to that required by the IEP from January 30, 2012 to March 30, 2012. Therefore, the MSDE finds that a violation occurred with regard to this aspect of the allegation.

Provision of Services During Periods of “Lockdown”

Based on the Findings of Facts #3 – #5 and #11, the MSDE finds that the BCPS does not follow the BCDC procedures for ensuring the provision of services to students during periods of “lockdown,” and that, as a result, the student was not provided with special education instruction on five (5) days. Therefore, the MSDE finds that a violation occurred with respect to this aspect of the allegation.

Instruction in Areas Other than English

Based on the Findings of Facts #2 and #6 – #10, the MSDE finds that special education instruction and related services are provided to students detained at the BCDC based on the service delivery system, and that, as a result, while the student was provided with special education instruction in English and history, he was not provided with special education instruction to assist him in achieving the annual IEP goals, as determined by the IEP team. Therefore, the MSDE finds that a violation occurred with respect to this aspect of the allegation.

Allegation #2: Revision of the IEP Based on the Availability of Services

The public agency must ensure that a FAPE is provided to each student with a disability through an IEP. Each student’s education program and placement must be determined by an IEP team. The IEP team’s decisions must be based on the unique needs of the student that arise from the disability, and be designed to ensure access to the general curriculum so that the student can meet the educational standards that apply to all students. The IEP team’s decisions may not be based solely on factors such as category and severity of the student’s disability, availability of services, configuration of the service delivery system, availability of space, or administrative convenience (34 CFR §§300.39, .101, .320 and .324, and Analysis of Comments and Changes to the IDEA, *Federal Register*, Vol. 71, No. 156, pp. 46588 and 46662, August 14, 2006).

While security issues and the availability of space in detention facilities present a challenge to ensuring the provision of a FAPE to students with disabilities, the special education services provided may not be based upon the pre-determination by school system staff of what is possible and not possible in those facilities. The school-based IEP may be revised to reflect changes in the student's circumstances, taking into consideration the various teaching strategies that can be utilized, specific remedial and compensatory techniques, the use of instructional aides, and other tools to support the learning process in the unique setting of a detention facility. However, the public agency must ensure that the IEP meets the individual student's needs that arise out of the disability (34 CFR §§300.2 and .320, and Analysis of Comments and Changes to the IDEA, *Federal Register*, Vol. 71, No. 156, p. 46662, August 14, 2006).

Based on the Findings of Facts #2 and #8, the MSDE finds that, for students with disabilities detained at the BCDC, the BCPS IEP team revises the IEP based on the service delivery system and not the individual needs of the student, and that as a result, the BCPS did not ensure that the student's IEP addressed his identified needs. Therefore, the MSDE finds that a violation occurred with respect to this allegation.

CORRECTIVE ACTIONS/TIMELINES:

Student Specific

The MSDE requires the BCPS to provide documentation by the start of the 2012-2013 school year, that it has convened an IEP team to determine the amount and nature of *compensatory services*¹ or other remedy necessary to redress the loss of services related to the violations found in this Letter of Findings.

The BCPS must provide the student's parent with proper written notice of the determinations made at the IEP team meeting, including a written explanation of the basis for the determinations, as required by 34 CFR §300.503. If the student's parent disagrees with the IEP team's determinations, she maintains the right to request mediation or file a due process complaint, in accordance with the IDEA.

Systemic

The MSDE requires the BCPS to provide documentation, by December 1, 2012, of the steps it has taken to ensure the provision of appropriate special education services to students at the BCDC. Upon receipt of this report, the MSDE will re-verify the data to ensure continued compliance with the regulatory requirements, consistent with the requirements of the Office of Special Education Programs. Additionally, the findings in the Letter of Findings will be shared with the MSDE's Office of Quality Assurance and Monitoring for Continuous Improvement for its consideration during present or future monitoring of the BCPS.

¹ Compensatory services, for the purposes of this letter, mean the determination by the IEP team as to how to remediate the denial of appropriate services to the student (34 CFR §300.151).

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Documentation of all corrective action taken is to be submitted to this office to the attention of the Chief of the Complaint Investigation/Due Process Branch, Division of Special Education/Early Intervention Services, MSDE.

TECHNICAL ASSISTANCE:

Technical assistance is available to the complainant and the BCPS by Mrs. Martha J. Arthur, Education Program Specialist, MSDE. Mrs. Arthur may be contacted at (410) 767-0255.

Please be advised that both the complainant and the BCPS have the right to submit additional written documentation to this office, which must be received within fifteen (15) days of the date of this letter, if they disagree with the Findings of Facts or conclusions reached in this Letter of Findings. The additional written documentation must not have been provided or otherwise available to this office during the complaint investigation and must be related to the issues identified and addressed in the Letter of Findings. If additional information is provided, it will be reviewed and the MSDE will determine if a reconsideration of the conclusions is necessary. Pending the decision on a request for reconsideration, the school system must implement any corrective actions consistent with the timeline requirements as reported in this Letter of Findings.

Questions regarding the findings, conclusions and corrective actions contained in this letter should be addressed to this office in writing. The student's 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 due process.

Sincerely,

Marcella E. Franczkowski, M.S.
Assistant State Superintendent
Division of Special Education/
Early Intervention Services

MEF/ch

cc: S. Dallas Dance
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