



U. S. Department of Justice

Civil Rights Division

Assistant Attorney General

Washington, D.C. 20530

JAN 12 2016

VIA EMAIL AND U.S. MAIL

The Honorable Phil Bryant
Governor
State of Mississippi
550 High Street
Jackson, MS 39201

The Honorable Jim Hood
Attorney General
State of Mississippi
550 High Street, Suite 1200
Jackson, MS 39201

Re: Investigation of Compliance with the Individuals with Disabilities Education Act at Leflore County, Mississippi, Juvenile Detention Center

Dear Governor Bryant and Attorney General Hood:

We write regarding the United States Department of Justice's ("DOJ") investigation of whether the special education and related services at the Leflore County Juvenile Detention Center ("Detention Center") in Greenwood, Mississippi, comply with the Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C. §§1400-1482, and regulations promulgated for Part B of IDEA, in 34 C.F.R. § 300, *et seq.* We find reasonable cause to believe that the provision of special education and related services at the Detention Center school violates the federal rights of children under IDEA in three important respects. First, the Detention Center school lacks appropriate Child Find policies to identify, locate and evaluate children with disabilities. Second, the Detention Center school does not promptly obtain students' Individualized Education Programs ("IEPs") and related records from their home schools. Third, the Detention Center school does not provide students with the educational services as described in IEPs, which deprives students with disabilities of a free appropriate public education ("FAPE").

Our investigation of the Detention Center began in 2009. In addition to our first visit to the Detention Center that year, we visited the Detention Center school in December 2013 and in July 2015. During those visits, we met with the director, teachers and administrators who are responsible for special education, and we spoke with many of the children who were there. We have also reviewed documents received from the Detention Center and from the Mississippi Department of Education.

The Mississippi Department of Education operates the education program at the Detention Center, although Leflore County, Mississippi (“County”) owns and operates the facility. The Detention Center itself is small, with 30 beds, but its impact on Mississippi children is significant. Male and female students between 10 and 17 years of age are typically detained there for periods ranging from a few hours to more than 30 days, although the Detention Center has the capability to house children for 90 days. Children in the Detention Center are from Leflore County as well as 21 other Mississippi counties that contract with the County. Although there may be only a few children at the Detention Center at any one time, it houses large numbers of children each year because children come and go throughout the year. In addition, children are sometimes repeatedly confined in the Detention Center many times in a year or in quick succession.

Throughout our investigation of the Detention Center’s educational program, we received full cooperation from representatives of the Mississippi Department of Education and the Detention Center staff. We appreciate this cooperation, and we are aware that the staff and educators care deeply about the children and are making an effort to improve. Although some positive changes have occurred, some of the significant violations of the IDEA that we identified in 2009 remain unresolved in 2015. Our preferred course of action at this juncture would be to avoid contested litigation through your cooperation to remedy the violations of IDEA that we describe in this letter. We want to be clear, however, that if efforts at voluntary resolution are not successful, the United States is authorized by law to initiate an action for appropriate relief.

IDEA INVESTIGATION

We first provided notice of our investigation to the County in August 2009 under the Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. § 14141 (“Section 14141”), and the Civil Rights of Institutionalized Persons Act, 42 U.S.C. § 1997 (“CRIPA”). Both CRIPA and Section 14141 give DOJ authority to seek a remedy for a pattern or practice of conduct that violates the constitutional or federal statutory rights of youth in juvenile justice institutions, including violations of federal statutes such as IDEA. We visited the Detention Center in November of 2009. On March 31, 2011, we issued a Findings Letter to the County setting forth the results of our investigation (“Findings Letter”), which is enclosed.

I. IDEA Non-Compliance Findings Against the County During Our Initial Investigation.

When we opened the investigation and conducted our initial onsite tour, education services at the Detention Center school were being provided by the Leflore County school district. In our Findings Letter, we found that the Detention Center school failed to provide

special education services to students with disabilities as required by IDEA.¹ Specifically, the Detention Center deprived students of their right under IDEA to a free appropriate public education (“FAPE”) by failing to identify children with disabilities, failing to provide them with the specialized education and related services that IDEA requires, ignoring IDEA’s requirements for student discipline, and leaving students struggling through material inappropriate for their level of achievement under the tutelage of an under-qualified teacher. Findings Letter at 16-22.

In December 2013, we re-visited the Detention Center, accompanied by a special education expert, to determine if the Detention Center had remedied the IDEA violations we found in 2011. We observed that the Detention Center had made little progress in addressing the IDEA violations we identified in our Findings Letter. In December 2013, efforts to identify children with disabilities were still inadequate, the Detention Center did not promptly obtain Individualized Education Program (“IEP”) records from students’ home schools, the Detention Center did not provide education services described in IEPs, disruptive students were sent to their rooms all day without access to instructional materials, no staffing changes had occurred to ensure that a qualified teacher taught core subjects above eighth grade to special education students, and the Detention Center did not provide transition services. At the conclusion of our tour, a Special Litigation Section attorney and our education expert explained to the Detention Center representatives the ongoing deficiencies with the Detention Center’s IDEA compliance.

II. Mississippi’s Take-Over of Responsibility for IDEA Compliance at the Detention Center School.

On September 16, 2013, Mississippi Governor Phil Bryant announced the state’s take-over of the Leflore County schools. The Governor’s proclamation stated that “due to a continued pattern of poor student performance, which jeopardizes the safety, security, and educational interests of the children enrolled in the schools of [Leflore County School District], a state of extreme emergency exists in the Leflore County School District.” The proclamation placed the County school district under the jurisdiction of the Mississippi Board of Education pursuant to Mississippi law and authorized the Board “to abolish the district and its existing school board and superintendent of schools.”² A Mississippi Department of Education conservator remains in charge of the County schools, which includes the school at the Detention Center. As a result, Mississippi is responsible for IDEA compliance at the Detention Center school.³

¹ Our Findings Letter also identified numerous Constitutional violations relating to safety and security. On June 18, 2015, the federal district court for the Northern District of Mississippi entered a consent decree that resolved our safety and security claims against the County. Settlement Agreement and Order Between the United States and Leflore County, Mississippi, *United States v. Leflore Cnty., Mississippi*, No. 4:15-cv-00059-DMB-JMV, Dkt. # 10 (N.D. Miss. June 18, 2015). The safety and security consent decree did not resolve our IDEA claims, and the state was not a party to the decree.

² The nine-member Mississippi Board of Education “formulate[s] policies according to law for implementation by the State Department of Education.” Miss. Const. art. VIII, § 203, cl. 2.

³ The effect of the proclamation for IDEA purposes is that Mississippi and the Mississippi Board of Education are now acting as the “local educational agency” for the Detention Center school and other County schools. See 34 CFR §300.227 and 300.175 (Direct services by the SEA). According to the

Accordingly on December 19, 2014, pursuant to Section 14141, we expanded our investigation of the Detention Center to include examination of Mississippi's role in providing special education and related services at this facility. We explained in our notice of the expanded investigation that if we concluded that Mississippi is violating IDEA at the Detention Center, we would inform you of our conclusions.

In response to our expanded investigation, Mississippi acknowledged internally the deficiencies in the Detention Center school's IDEA compliance. An email describing a January 16, 2015, meeting among Mississippi administrators and the Detention Center director stated, "IDEA compliance is an ongoing issue in a number of specific areas." On January 22, 2015, Mississippi developed an "Improvement Plan for Students with Disabilities" outlining the "areas of noncompliance identified by the Department of Justice and the proposed corrective actions by the Leflore County School District and Leflore County Juvenile Detention Center." An undated document entitled "Leflore County School District Efforts to Comply with Corrective Actions Required by the Department of Justice" purported to detail corrective actions taken during 2014-2015.

On March 10, 2015, we participated along with our education expert consultant in a telephone conference with Mississippi education administrators. We discussed our long-standing concerns about the Detention Center's IDEA compliance. In response, the administrators assured us that they had developed and implemented reforms to address our concerns. Mississippi agreed to and did provide documents we requested concerning its IDEA compliance efforts.

We again visited the Detention Center school on July 15, 2015, accompanied by our education expert. We spoke with the teachers, the teacher's aide, the Detention Center director, representatives of the Mississippi Department of Education, and several of the students present that day, and we observed several periods of instruction. We also reviewed documents received from Mississippi before and during our visit. On September 28, 2015, our education expert

proclamation, the County school district had administrative control and direction over the Detention Center school. The proclamation, however, vested control of the County schools in the Mississippi Board of Education and effectively made Mississippi the agency responsible for IDEA compliance at the Detention Center school (and other schools in the County).

Even absent the take-over, however, Mississippi is generally responsible under IDEA for ensuring the provision of special education and related services at the Detention Center school. IDEA applies to Mississippi under 34 C.F.R. §300.2(a), and to public agencies within Mississippi, including the "State Educational Agency," defined as the "State board of education or other agency or officer primarily responsible for the State supervision of public elementary schools and secondary schools." 34 C.F.R. §300.2(b)(1)(i), 34 C.F.R. §300.41. State educational agencies are responsible for ensuring: that IDEA requirements are carried out; that each educational program for children with disabilities within the state is under the general supervision of persons at the state level; and that educational programs meet the state's educational standards, including IDEA requirements. 34 C.F.R. §300.149.

joined us in a conference call with an attorney representing the Mississippi Department of Education and informed her of our observations during our tour.⁴

We have completed our investigation, and we have reached the following conclusions:

- Mississippi violates the IDEA because the Detention Center school has failed to implement appropriate Child Find policies and procedures to identify, locate and evaluate children with disabilities.
- Mississippi violates the IDEA because the Detention Center school does not obtain students' IEPs from their home schools in a timely fashion.
- Mississippi violates the IDEA by failing to provide students with disabilities a free appropriate public education because the Detention Center school does not provide students with the educational services as described in IEPs.⁵

VIOLATIONS OF IDEA

Congress enacted the IDEA in 1975 to ensure that children with disabilities have available to them a “free appropriate public education that emphasizes special education and related services designed to meet their unique needs.” 20 U.S.C. §§ 1400(d)(1)(A) and 1412(a)(1)(A). With specific limited exceptions for those incarcerated in adult prisons, age-eligible students with disabilities in detention are entitled to a free appropriate public education under IDEA. 34 C.F.R. §§ 300.101-102, § 300.324 (d)(1)(i).

Children with disabilities who are in detention do not forfeit their right to special education services. *See* Statement of Interest of the United States, *G.F. v. Contra Costa Cnty.*, No. 3:13-cv-03667-MEJ (N.D. Cal. Feb. 13, 2014) at 12 (“The fact that youth have been charged with or convicted of a crime does not diminish their substantive rights, procedural safeguards, and remedies provided under the IDEA to youth with disabilities and their parents.”); *see also* *Dear Colleague Letter on the Individuals with Disabilities Education Act for Students with Disabilities in Correctional Facilities*, Office of Special Educ. and Rehabilitative Serv., U.S. Dep’t of Educ. 1 (Dec. 5, 2014) (“Dear Colleague Letter”). “Every agency at any level of government that is involved in the provision of special education and related services to students in correctional facilities must ensure the provision of [a free appropriate public education].” *Dear Colleague Letter* at 2.

⁴ Due to time constraints and scheduling conflicts, we were unable to provide an “exit interview” at the conclusion of our July 2015 visit, or to give a summary of our ongoing concerns prior to our phone call on September 28, 2015.

⁵ In the context of an investigation in Mississippi’s system for serving children with mental health conditions in the state, we made similar findings regarding Mississippi’s IDEA compliance in state-run psychiatric facilities. *See* Letter from Assistant Attorney General Thomas Perez re: United States’ Investigation of the State of Mississippi’s Service System for Serving Persons with Mental Illness and Developmental Disabilities (Dec. 22, 2011) at 31-32 (finding that Mississippi failed to meet its Child Find obligation and its obligation to serve children in the least restrictive setting appropriate).

IDEA explicitly applies to juvenile correctional facilities that “are involved in the education of children with disabilities.” *See* 34 C.F.R. § 300.2(b)(1)(iv). *See also Handberry v. Thompson*, 219 F. Supp. 2d 525 (S.D.N.Y. 2002) (requiring that a correctional facility provide children with IDEA-compliant educational services), *aff’d* in relevant part, 446 F.3d 335 (2d Cir. 2006); *Alexander S. v. Boyd*, 876 F. Supp. 773, 788 (D.S.C. 1995) (finding IDEA applicable to school-aged detainees in juvenile detention facilities); *Donnell C. v. Illinois State Bd. of Educ.*, 829 F. Supp. 1016, 1020 (N.D. Ill. 1993) (holding that IDEA applies to children held in pretrial detention). Short-stay facilities are no exception; children in detention facilities for short periods are nevertheless entitled to an IDEA-compliant education. *See, e.g., Alexander S.*, 876 F. Supp. at 801-03 (after finding practical ways to remove obstacles due to stays averaging 21 days, the court expected the correctional facility to come “into strict compliance with the IDEA and Section 504”); *Unified Sch. Dist. No. 1 v. Connecticut Dep’t of Educ.*, 780 A.2d 154, 168 (Conn. App. Ct. 2001) (state court case interpreting IDEA and finding that “[a]lthough the volume of short-term residents may be daunting, this factor does not relieve the plaintiff from the burden of upholding the right of a special education student to a free and appropriate public education.”), *cert. denied*, 782 A.2d 1253 (Conn. 2001).⁶

I. The Detention Center School Fails to Implement Appropriate and Effective Child Find Policies and Practices.

IDEA requires that SEAs have in effect policies and procedures to “ensure that [a]ll children with disabilities residing in the State . . . and who are in need of special education and related services, are identified, located, and evaluated.” 34 C.F.R. § 300.111(a)(1)(i); *see also* 20 U.S.C. § 1412(a)(3) and 1413(a)(1). This is known as “Child Find.” The Child Find requirement imposes an affirmative duty to have in effect policies and procedures to locate and timely evaluate children “who are suspected of being a child with a disability . . . and who are in need of special education and related services,” including those children who “are advancing from grade to grade[.]” 34 C.F.R. §§ 300.111(a), (c)(1).

The state is responsible for having Child Find policies and procedures in effect; public agencies involved in the education of children with disabilities, including local educational agencies and juvenile correctional facilities, must implement these policies. *See* Dear Colleague Letter at 3-4, 8, 11. The Child Find duty is triggered “when the local educational agency has reason to suspect a disability coupled with reason to suspect that special education services may be needed to address that disability.” *El Paso Indep. Sch. Dist. v. Richard R.*, 567 F. Supp. 2d 918, 949-51 (W.D. Tex. 2008) (school district failed to fulfill Child Find obligations by not referring the child for an evaluation “despite clear signals that an evaluation was necessary and appropriate”).

In the context of a juvenile correctional facility, Child Find responsibilities include students who have never been identified as a student with a disability prior to their entry into the facility. Dear Colleague Letter at 3. The facility may not “assume that a student that enters a correctional facility is not a student with a disability simply because he or she has not yet been

⁶ Civil actions regarding IDEA may be brought in state courts of competent jurisdiction as well as in federal district courts. *See* 20 U.S.C. §1415(i)(2)(A).

identified as such.” *Id.* at 11. Students in a correctional setting who are suspected of having a disability must be evaluated in a timely manner, “even if the student will not be in the facility long enough to complete the evaluation.” *Id.* at 4. Mississippi, which has taken the place of the Leflore County school district, and the correctional facility “must coordinate assessments to ensure that a timely evaluation occurs.” *Id.*; see also 34 C.F.R. §300.304(c)(5).

Our investigation of Mississippi’s compliance with the IDEA at the Detention Center determined that the state does not identify, locate and timely evaluate children to determine whether they are in need of special education and related services. The Detention Center school does not adequately screen children for disability, timely obtain academic records, adequately observe and respond to student performance, or refer children for an evaluation to determine whether they may have a disability when there is reason to believe that the student is struggling in school, is failing or is at risk of poor educational performance. These findings are consistent with violations identified in our 2011 findings letter, and reveal that Mississippi’s efforts to bring the Detention Center into compliance with IDEA Child Find obligations have been unsuccessful.

In response to our expanded investigation, Mississippi explained its Child Find policies and procedures to us in March 2015. For children who are County residents, Mississippi stated that “those detainees who are suspected of having a disability are referred to the school district’s MET [Multidisciplinary Evaluation Team] for action.” For children who reside outside the County, Mississippi told us that the child’s home school is contacted to obtain the IEP. Some schools have IEPs in electronic form, but others do not.

In our July 2015 visit, however, we observed that the Detention Center was still not taking basic steps to identify students who are in need of special education and related services.

First, Mississippi is in violation of IDEA Child Find obligations because the Detention Center fails to adequately screen children for disability or the need for special education and related services. The Detention Center uses an intake form when children first arrive at the Detention Center school, but the form does not gather information about the child’s special education status or needs, or inquire whether the student had received special education services in the past. Instead, the form asks generic questions such as “Did you attend school on a regular basis?”, “Do you like reading books?”, and “How do you learn best?”

Mississippi also does not take adequate steps to determine whether there is a link between a child’s educational deficits and disability. The Detention Center uses a screening test known as Tests of Adult Basic Education (“TABE”) as an indicator of academic performance for new students. TABE can measure a child’s level of achievement, but it does not provide information that explains why the child is achieving at that level. For instance, TABE might assess a student as performing at the ninth grade level, but TABE would provide no information about whether that performance might be due to a disability. For that reason, TABE alone is an insufficient Child Find tool to identify students who may need special education. *Cf. D.K. v. Abington Sch. Dist.*, 696 F.3d 233, 250 (3d Cir. 2012) (“a poorly designed and ineffective round of testing does not satisfy a school’s Child Find obligations”).⁷ The Detention Center School staff admitted that

⁷ We pointed out similar problems in our 2011 Findings Letter. We observed that the Detention Center had a structured intake assessment form, but Child Find was significantly limited by inadequate or non-

if a student performs poorly on the TABE, the staff members take no further steps to determine whether the child has a disability that may require special education and related services.

During our July 2015 visit, we encountered a child who had not been screened for an educational disability and seemed to have fallen through the cracks entirely. We initially encountered 15-year-old A.A.⁸ sleeping in his cell on July 14 during the school day.⁹ He had arrived at the Detention Center on June 29, but he could not recall the last time he went to the Detention Center school, although he said he may have been once or twice. He said that when he arrived, no one asked him if he was a special education student, and he did not take an educational assessment. He said he does not have to go to school, it is his choice whether to go to school, and a lot of students stay out of school. Failing to take steps to determine whether a student is in need of special education and related services for weeks does not satisfy the requirements of Child Find

Second, Mississippi's student records retrieval practices contribute to the ongoing violations of Child Find requirements at the Detention Center. As described more fully below in Section II, we saw no evidence establishing that the Detention Center school obtains the academic records of each student promptly. In addition, the Special Education Director for the Detention Center told us that the Detention Center does not retrieve a student's educational records from the student's home school district unless the Detention Center learns the child already has an IEP. As a result, the Detention Center cannot examine a student's educational records upon or shortly after arrival and identify students suspected of having a disability that would entitle them to an evaluation and if found eligible for special education and related services, an IEP. Because Mississippi attempts to obtain records only of children who have already been identified as eligible for special education and related services, the Detention Center lacks key information that could be relevant in determining whether the child *should* be evaluated for eligibility.

Third, the Detention Center violates IDEA's Child Find obligations because it fails to observe and respond to student performance that may indicate that the student has a disability and needs special education and related services. In conducting Child Find in this context, educators generally observe student performance and comprehension of material and consider whether failure to perform adequately may be the result of a disability. *See generally El Paso Indep. Sch. Dist.*, 567 F. Supp. 2d at 951 (based on the child's record of consecutive failure on standardized tests, his "continuing difficulties in multiple subjects, and the inability of prior

existent assessments and faulty scoring. The intake forms did not capture data regarding special education status or history, and we identified two children who had previously received special education services but the Detention Center had not identified them as possibly having a disability. Findings Letter at 18.

⁸ To protect the confidentiality of the children in the Detention Center, we will use pseudonym initials.

⁹ We visited the Detention Center on July 14 and 15, 2015. Our July 14 visit centered upon the safety and security issues embodied in the existing consent decree; our July 15 visit centered on our IDEA investigation. *See supra* note 1.

accommodations to improve his scores,” there was reason to suspect that the child “had a disability and that special education services might be needed to address that disability.”¹⁰

At the Detention Center, children receive education through the use of instructional computer software called “Grade Results.” Mississippi describes Grade Results as “a central component of the academic program at the Detention Center.” Each child sits at a computer working through the computer program, which has a tutorial followed by an assessment.¹¹ During our July 15 visit, we observed a male student doing a lesson in Grade Results. He did not take the tutorial but instead took the assessment repeatedly for hours, generating failing score after failing score. While this student struggled through the assessment, there were seven other children in the classroom working on their own Grade Results lessons and two teachers.

In this situation, the teacher should notice if a student encounters difficulty and should respond with a general education intervention (such as working with the student to develop an understanding of the material). *See generally* 34 C.F.R. § 300.309 (qualified professionals may determine that a child has a specific learning disability if “[t]he child does not make sufficient progress to meet age or State-approved grade-level standards in one or more of the areas identified in paragraph (a)(1) of this section when using a process based on the child’s response to scientific, research-based intervention”). If the student continues to fail, however, the teacher should begin to suspect a disability and should consider referring the student for an evaluation.¹² However, for the male student we observed, neither teacher responded to this pattern of failure or, to our knowledge, referred the student for an evaluation.

Finally, Mississippi fails to refer children at the Detention Center for special education evaluations. Mississippi told us that “there have not been any students referred for special education while placed in the Leflore County Juvenile Detention Center” since October 2014. Both teachers at the Detention Center said they have not referred a child for special education evaluation for as long as they can remember. It is estimated that between 28 percent and 43 percent of detained and incarcerated youthful offenders have an identified special education disability, with a majority of these being learning disabilities.¹³ That the Detention Center has

¹⁰ *See also* 34 C.F.R. § 300.310 (a) (for children suspected of having learning disabilities, “[t]he public agency must ensure that the child is observed in the child’s learning environment (including the regular classroom setting) to document the child’s academic performance and behavior in the areas of difficulty.”).

¹¹ Our concerns about the use of computer-based instruction at the Detention Center are set out in more detail later in this letter, in the discussion of Mississippi’s failure to provide a free appropriate public education to students with disabilities at the Detention Center.

¹² *Cf.* Analysis of Comments and Changes, Assistance to States for the Education of Children With Disabilities and Preschool Grants for Children With Disabilities, 71 Fed. Reg. 46540, 46727 (Aug. 14, 2006) (to be codified at 34 C.F.R. Parts 300, 301) (noting in the context of IDEA due process protections for students who have not yet been determined to have a disability that “[s]chool personnel should refer children for evaluation through the agency’s child or special education referral system when the child’s behavior or performance indicates they may have a disability covered under the Act.”).

¹³ Christopher A. Mallett, *Seven Things Juvenile Courts Should Know About Learning Disabilities*, National Council of Juvenile and Family Court Judges, 5 (2011). *See generally* Elizabeth Cate, *Teach*

not identified any children in need of special education since October 2014 indicates that the Detention Center’s Child Find procedures are ineffective and that children at the Detention Center who are in need of special education and related services are not being identified, located and evaluated.

II. The Detention Center School Does Not Obtain IEPs Promptly.

IDEA entitles students with disabilities to “a free appropriate public education which emphasizes special education and related services designed to meet their unique needs” *Honig v. Doe*, 484 U.S. 305, 309 (1988); *see also* 20 U.S.C. §1412(a)(1). These services are memorialized in an IEP, which is “the central mechanism by which public schools ensure that their disabled students receive a free appropriate education.” *Polera v. Bd. of Educ. of the Newburgh Enlarged Sch. Dist.*, 288 F.3d 478, 482 (2d Cir. 2002).

IDEA requires that each student with a disability have an IEP to ensure that the student receives FAPE. A child with an IEP retains the right to FAPE in accordance with an IEP when that child moves from one school district to another school district in the same State and enrolls in a new school in the same school year, including when the new school is in a juvenile detention facility. 34 C.F.R. § 300.323(e) (when a student with an IEP transfers from one public agency to another in the state, the new public agency “must provide FAPE to the child (including initially through services comparable to those described in the child’s IEP from the previous public agency”); *see also* Dear Colleague Letter at 4, 10. The correctional facility “either must adopt and implement the child’s existing IEP or hold an IEP Team meeting to modify the contents of the IEP.” Dear Colleague Letter at 13 (citing 34 C.F.R. § 300.323(e)).

IDEA also requires that the Detention Center take reasonable steps to obtain a child’s records “promptly,” including IEPs and supporting documents and any other records relating to the provision of special education and related services to the child from the previous public agency in which the child was enrolled. 34 C.F.R. § 300.323(g)(1). The Detention Center “must have policies and procedures to ensure that the relevant records of students with disabilities who move to, and from, correctional facilities are transferred as expeditiously as possible.” Dear Colleague Letter at 4, 10; *see also id.* at 12 (“public agencies [are required to] take reasonable steps to promptly exchange relevant records”). If the IEP cannot be obtained from the parent or from the previous public agency, “the new public agency must, at a minimum, place the student in the regular school program, conduct an evaluation, and make an eligibility determination.” Dear Colleague Letter at 11 (citing 34 C.F.R. §300.323(f)(1)).

We determined that Mississippi does not promptly obtain IEPs for children with disabilities at the Detention Center. Our findings are based in part on the state’s own analysis. A March 31, 2015 audit report of the Mississippi Office of Compulsory School Attendance Enforcement concluded that the Leflore County school district (which was then and remains under the control of Mississippi) “has not met the criteria for appropriately providing educational

Your Children Well: Proposed Challenges to Inadequacies of Correctional Special Education for Juvenile Inmates, 34 N.Y.U. Rev. L. & Soc. Change 1, 10 (2010) (noting that approximately nine percent of all students aged six to twenty-one receive special education services nationally, but juvenile offenders qualify for these services at almost four times that rate).

services.” The audit recommended that the district “will need to implement protocol for immediate transmission of educational records for students with disabilities’ Individual Education Plan (IEP).” Similarly, a state “Observation Checklist for Detention Center Visits” noted on February 2, 2015 that two children at the Detention Center had IEPs, but that the Detention Center did not retrieve the correct IEP for either child from their home school district.

Mississippi told us that it has now “implemented a process to secure the IEPs from home school districts on each youth detainee within 24 hours of their arrival at the Detention Center.” Each day, an employee of the Mississippi Department of Education is to obtain the daily roster of children at the Detention Center. The employee is to use a computerized system called Mississippi Student Information System (“MSIS”) to locate each student’s records and determine the student’s home school and whether the child has an IEP. If so, the employee is to contact the home school to obtain the IEP, and the home school is to send the IEP to the Detention Center school.

With advance notice to Mississippi, we intended to confirm the state’s claims about its MSIS system during our July 2015 visit. Unfortunately, we found that Mississippi’s system does not result in the prompt retrieval of children’s IEPs. The MSIS system was unavailable during our July 2015 visit. The system was down for maintenance, and we were told that the MSIS system is taken down for maintenance for the entire month of July every year, even though the Detention Center school operates year-round. Consequently, we were not able to inspect and evaluate the effectiveness of the MSIS system in determining whether a student has an IEP. Even if the MSIS system had been functioning, however, it would not have facilitated the receipt of IEPs at the Detention Center. Neither of the teachers nor any other Detention Center staff has MSIS computer access or has been trained to use MSIS. In addition, Mississippi public schools were in summer recess during our July visit, so the Detention Center could not be sure that someone would be available at a student’s home school to respond to a request for an IEP.¹⁴ The Special Education Director for the Detention Center told us that the social worker responsible for requesting IEPs left on June 17.

The Detention Center staff should be prepared to obtain IEPs promptly year-round, using alternative means if the MSIS system is unavailable or public schools are in recess, but it was apparent that Mississippi’s current system does not work.¹⁵ When we visited the Detention Center school on July 15, we learned that the Detention Center had not yet obtained the current IEP of B.B., a special education student who had arrived over two weeks earlier on June 30. The Detention Center obtained B.B.’s IEP the day of our visit, but only after our education expert strongly expressed concern about the fact that B.B. was not being provided educational services in accord with an IEP. Similarly, C.C. arrived at the Detention Center on June 24, but the facsimile stamp on her IEP was July 15 -- the date of our visit. This is the same sort of IDEA

¹⁵ The Detention Center was able to produce for us some IEPs for students who had already left the Detention Center. These IEPs do not bear fax stamps or other information establishing when the Detention Center received the IEP, so we could not evaluate whether the Detention Center received those IEPs promptly following each student’s arrival.

violation documented in our 2011 findings letter, which demonstrates that Mississippi's efforts to develop a protocol to obtain IEPs promptly have been unsuccessful.¹⁶

III. The Detention Center School Does Not Provide Children with Disabilities with a Free Appropriate Public Education.

FAPE includes the provision of special education and related services in conformity with an IEP. 34 C.F.R. § 300.17(d). IDEA requires that each public agency must have “in effect,” for each child with a disability in its jurisdiction, an IEP, as defined in §300.320. 34 C.F.R. § 300.323(a). Failure to implement the IEP is a denial of FAPE. *See Houston Indep. Sch. Dist. v. Bobby R.*, 200 F.3d 341, 349 (5th Cir. 2000) (IDEA is violated by failures to implement substantial or significant IEP provisions), *cert. denied*, 531 U.S. 817 (2000); *see generally Van Duyn ex rel. Van Duyn v. Baker Sch. Dist. 5J*, 502 F.3d 811, 822 (9th Cir. 2007) (holding that a material failure to implement an IEP violates the IDEA); *Neosho R–V Sch. Dist. v. Clark*, 315 F.3d 1022, 1027 n. 3 (8th Cir. 2003) (“[W]e cannot conclude that an IEP is reasonably calculated to provide a free appropriate public education if there is evidence that the school actually failed to implement an essential element of the IEP that was necessary for the child to receive an educational benefit.”); *Williamson Cnty. Bd. of Educ. v. C.K.*, No. 3:07-0826, 2009 WL 499386, at *19 (M.D. Tenn. Feb. 27, 2009) (the school must provide educational benefits that are more than *de minimis* in order to be “appropriate”). In addition, the child’s IEP must be accessible to the child’s regular education and special education teachers and “any other service provider who is responsible for its implementation.” 34 C.F.R. § 300.323(d)(1).

We determined that Mississippi fails to provide FAPE to children with disabilities at the Detention Center. A primary cause of the denial of FAPE is the state’s failure to timely obtain IEPs, as described above. Because the school personnel at the Detention Center are unaware of the existence of the IEP or its content, it is self-evident that they cannot implement it. As we explain in more detail below, we also found that the Detention Center’s overreliance on computerized education contributes to the failure to provide FAPE.

On March 23, 2015, Mississippi assured us that the Detention Center was both obtaining and implementing students’ IEPs. The Detention Center Special Education Director wrote that the state had implemented a process not only to obtain IEPs promptly, but to review and revise IEPs as necessary, and to “*carry[] the IEP out as adopted*” (emphasis added). Just a few days later, however, on March 31, 2015, an audit by the Mississippi Office of Compulsory School Attendance Enforcement revealed that the Leflore County School District “needs to ensure that services are provided to students with special needs in accordance with the students’ IEP.”

¹⁶ When we issued our Findings Letter in 2011, the Detention Center did not have an effective system for retrieval of students’ IEPs from their home schools. We noted then that no IEPs were available at the Detention Center school during our 2009 tour. We discovered a student with special needs who had been housed at the Detention Center for 36 days with no IEP. This violated IDEA. Findings Letter at 19.

Our July 2015 visit to the Detention Center school revealed significant deficiencies in IEP implementation and the provision of FAPE. Because the Detention Center does not obtain IEPs in a timely fashion, there were no instructional adaptations listed on lesson plans¹⁷, IEPs were not used to drive instruction, and children did not receive the special education, related services, and supplementary aids and services and other supports contained in IEPs. We documented similar inadequacies in our 2011 findings letter; our 2015 visit revealed that any measures taken by Mississippi to remedy these problems have been ineffective.¹⁸

The Detention Center's failure to implement IEPs has significant consequences for children with disabilities. The facsimile stamp on C.C.'s IEP indicates she was at the Detention Center for 14 school days without her IEP. Her IEP directed that C.C. should receive her education services in small groups, have test direction read to her, be seated at the front of the room, be allowed a calculator, and receive the "related service" of speech therapy on a weekly basis.¹⁹ In anticipation of our July 15 visit, we requested documents concerning related services pursuant to IEPs since April 21, 2015. No documents were provided indicating that a speech therapist provided services to C.C., even though Mississippi produced records demonstrating that the Detention Center has two licensed speech therapists and one licensed occupational therapist available to provide related services to children there.

Similarly, B.B. was at the Detention Center for 10 school days without his current IEP. The IEP, obtained by the Detention Center during our visit, directed that B.B. receive medication for Attention Deficit Hyperactivity Disorder at school by the nurse, be clued to stay on task, be allowed extra time to complete graded activities, and receive speech therapy twice weekly. The IEP also noted that "[d]ue to language deficits, the student needs a quiet location in a small group to learn specific language skills to improve communication." We observed on July 15 that B.B. was receiving computerized instruction in the same classroom as the other students rather than a quiet location in a small group, even though the Detention Center has a separate classroom where students could receive instruction alone or in small groups. In addition, as with C.C., there was no indication in the documents Mississippi produced that B.B. received speech therapy.

¹⁷ Instructional adaptations "support students' interactions through changes in the presentation, setting, timing or scheduling, and response mode of instruction." Leanne R. Ketterlin-Geller & Elisa M. Jamgochian, *Instructional Adaptations: Accommodations and Modifications that Support Accessible Instruction* 131 (Stephen N. Elliott et. al. eds.) (2011); *See also* 34 C.F.R. § 300.39(b)(3) (under IDEA, special education includes "specially designed instruction," defined as adapting, as appropriate to the child's needs, "the content, methodology, or delivery of instruction" to address the child's unique disability-related needs and to ensure the child's access to the general curriculum, so that the child can meet the educational standards within the jurisdiction of the public agency that apply to all children.)

¹⁸ In our 2011 Findings Letter, we noted the Detention Center did not comply with IDEA requirements governing IEPs. IEPs were not available, and thus, they were not implemented. No instructional adaptations were observed at the Detention Center, nor were any adaptations listed on lesson plans. Lesson plans were incomplete, there was no evidence of academic or behavioral-related record keeping, and lesson plans did not differentiate assignments for students at various levels. Findings Letter at 19.

¹⁹ *See* 34 C.F.R. § 300.34 (related services include "such developmental, corrective and other supportive services as are required to assist a child with a disability to benefit from special education, and includes speech-language pathology and audiology services.")

We also find that the Detention Center’s almost exclusive use of computerized education contributes to the denial of FAPE. Our observations and document reviews revealed that the Detention Center school uses a “one-size-fits all” approach to children’s special education needs, assigning them computerized instruction with little or no consideration of how the child’s disability affects his progress in the general education curriculum, or what special education, related services and supplementary aids and services might allow the child to receive FAPE. Detention Center special education students often had supplementary aids or other services provided on their IEPs that the computerized instruction did not provide. For instance, IEPs that Mississippi provided to us²⁰ contained an array of educational aids and alterations to the curriculum:

- D.D. should receive supplementary aids and services and personnel supports in general education, including “[r]edirect student to the test,” “[r]ead test directions (but not test items) to student or group-repeating and/or paraphrasing directions,” and “[e]xtended time.”
- E.E. needed to be “[clue]d to stay on task.”
- F.F.’s teachers should “shorten assignments and test.”
- G.G. should have all tests and assignments “[r]ead aloud except for when dealing with reading comprehension.”
- H.H. needed a daily “[c]heck for understanding.”
- I.I. needed test directions read to him, needed the teacher to “highlight key words/phrases in directions (e.g. complete sentences, show your work),” needed to be allowed “marking of answers in booklet and transferring of answers from test booklet,” and needed to have a spelling dictionary that showed the correct spelling but did not give definitions.
- J.J. needed to be “[s]eated by himself, away from distractions” but should “take tests in inclusion room.”

To comply with IDEA, the Detention Center must provide each eligible student with a disability with FAPE in conformity with his or her IEP. As noted above, when a child moves to a detention center, the facility must either provide the special education and related services and supplementary aids and services and other supports included in the child’s IEP, or convene an IEP team to develop and implement a new IEP that meets IDEA requirements. 34 CFR §300.323(e)(1)-(2). The Detention Center does not carry out either of these means of providing

²⁰ In response to our document requests in March 2015 and July 2015, Mississippi provided us with several IEPs for students who had been at the Detention Center in the first half of 2015. In most cases, we could not match an IEP with the Detention Center daily roster of children at the facility. When we did find an IEP for a child who appeared on the roster, the IEP often bore no indication as to when it was received.

FAPE. Instead, lacking IEPs, it uses computerized tutorials as its predominant mode of instruction. As the above sample of specific, individualized educational aids and instructional alterations shows, however, reliance on a computer software program is no substitute for a teacher who can respond to the child's needs and exercise professional judgment in implementing the child's IEP. Furthermore, the Detention Center school should have been able to readily implement the common-sense, practical interventions reflected in these IEPs, given the school's small size, physical lay-out, and available staff.

REMEDIAL MEASURES

To rectify the identified deficiencies and protect the federal statutory rights of children confined at the Detention Center, Mississippi should implement the minimal remedial measures set forth below.

A. Mississippi Should Use Reliable Screening Methods and Ensure the Timely Evaluation of Children Suspected of Having a Disability.

To comply with IDEA requirements to identify, locate and evaluate children suspected of having a disability who are in need of special education and related services, Mississippi should provide adequate screening of students for special education needs when they enter the Detention Center. Students should be asked about previously offered special education during intake. When feasible, staff at the Detention Center should reach out to staff at sending school districts to discuss whether disability may be the reason for any educational deficits observed in Detention Center students. For children who have previously been detained at the Detention Center, staff should use their own knowledge and, if possible, any Detention Center educational records, in assessing whether these children have a disability.

Once the child is in the Detention Center, Mississippi should require teachers to observe and evaluate student performance and to implement and ensure documentation of academic interventions for students who are struggling academically. If the documented interventions are unsuccessful, the teacher should consider referring the child for a special education evaluation. Mississippi should include in its Child Find practices working with individuals in the community who come into contact with children entering the Detention Center, including social workers, probation officers, law enforcement and medical and mental health professionals and other staff. *See Dear Colleague Letter at 9.* As these professionals are an initial point of contact for juvenile justice involved children, their ability to identify children suspected of having disabilities may allow these children to be evaluated and served appropriately while in the Detention Center. Mississippi should also provide and ensure documentation of academic interventions for students who are struggling while in the Detention Center School and take steps to determine whether students' educational difficulties may indicate a disability.

Where the Detention Center suspects that a child may have a disability, the child must be evaluated in a timely manner, even if the child will not be in the Detention Center long enough to complete the evaluation. *See Dear Colleague Letter at 3-4, 11.* Communication and coordination with the child's home school district is essential in this process.

B. Mississippi Should Obtain Education Records For All Students Entering the Detention Center.

To identify, locate and evaluate children suspected of having a qualifying disability, the Detention Center should obtain prior education records from school systems for all arriving students to identify students who have IEPs and to determine whether the school performance of a child who is not receiving special education indicates that the child may have a disability.

C. Mississippi Should Promptly Obtain IEPs from a Child's Home School.

To identify, locate and evaluate children suspected of having a disability who need special education and related services and to ensure the provision of a free appropriate public education for eligible students with disabilities at the Detention Center Mississippi should develop an appropriate and reliable system for the Detention Center to promptly obtain IEPs from a student's home school, including when the computerized MSIS system is unavailable or public schools are in recess.

D. Mississippi Should Provide Individualized Special Education and Related Services to Students with Disabilities.

A free appropriate public education must be provided to all students with disabilities who have been determined to need special education and related services after they are identified, located, and evaluated in accordance with Child Find. The special education and related services provided should be individualized to the child's specific disability and educational needs and should not be a "one-size-fits all" approach. To the extent that a child's IEP requires special education, related services or supplementary aids and services that cannot be provided through the Detention Center's computerized instruction, Mississippi must ensure that the education and services are provided, including through classroom instruction, if necessary. Further, as recommended in the Dear Colleague Letter, in implementing or devising IEPs for children at the Detention Center, Mississippi "should pay particular attention to those related services that are likely to be required for students in correctional facilities – for example, counseling, parent counseling and training, psychological services, transportation, and social work services in schools." See Dear Colleague Letter at 14 (citing 34 C.F.R. §300.34(c)(2), (c)(8), (c)10, (c)(14), and (c)16)).

E. Mississippi Should Develop, Implement, and Review IEPs for Students with Disabilities.

Pursuant to IDEA, Mississippi must either implement an appropriate IEP for each student at the Detention Center school who is eligible for services under IDEA, and who had an IEP from a previous school district, and provide necessary special education and related services, or develop and implement new IEPs for these students. When the Detention Center develops IEPs for students, the Detention Center must use a properly constituted IEP team, periodically review and if appropriate, revise the IEP as the Detention Center learns new information about each child, and keep the IEP in a place easily accessible to educational staff.

F. Mississippi Should Provide the Services Described in a Student's IEP From the Previous School District.

Once the Detention Center has promptly obtained the child's IEP, staff should review it and determine how the Detention Center will implement its requirements. FAPE must be provided to students with IEPs who move into new school districts and enroll in new schools in the same school year through services comparable to those described in the student's IEP from his home school in the absence of adequate justification for changes in services. IEPs must be appropriately implemented and should include collection and reporting of data on student progress.

* * * * *

For children with disabilities who find themselves involved in the criminal justice system, the stakes are high. These children often are "already at the margins," with the possibility of receiving an appropriate education as an important "means to recast one's future and enhance life choices." *Buckley v. State Corr. Inst. Pine Grove*, 98 F. Supp.3d 704,720 (M.D. Pa. 2015) (finding a denial of a free appropriate public education to an incarcerated youth who was placed in solitary confinement). Nevertheless, children with disabilities, who are already incarcerated at disproportionate rates, often are denied their right to an appropriate education while institutionalized. *Id.* (noting that even though "these are young people whose own actions have propelled them into correctional custody . . . like all IDEA-eligible students, [plaintiff] was still entitled to an appropriate education"). Children who already suffer the disruption of detention that keeps them from their home school should not also be deprived of their right to a free appropriate public education while detained.

The cumulative effect on children of Mississippi's non-compliance with IDEA at the Detention Center is significant. The Detention Center is small, but it houses large numbers of children each year because children come and go throughout the year, and they are sometimes repeatedly confined many times in a year or in quick succession. Some confinements cause a child to miss school for weeks or months in his or her home school, and Mississippi's ongoing failure to provide federally-mandated special education services exacerbates the harm Detention Center children suffer from repeated interruptions in their education. The Detention Center accepts children from 21 other counties in Mississippi, so the effects of its special education services are felt throughout the state.

In the context of a short-stay facility like the Detention Center, reliable IDEA compliance should be a priority. If a child is only at the Detention Center for a short time, an unnecessary delay in obtaining the child's records from the home school or conducting Child Find can mean that Mississippi misses the opportunity to meet the special education needs of that child. Because children cycle through short-stay facilities repeatedly, Mississippi should develop especially robust and reliable systems to reduce the risk of errors and confusion that can cost a child the special education services to which he or she is entitled.

Because the State of Mississippi and the Board of Education are now acting as the local educational agency for Leflore County, the state has an opportunity to model IDEA compliance for all local educational agencies and other public agencies across Mississippi. Both within the Detention Center, and across Leflore County, the state should take this opportunity to identify children with disabilities who are in need of special education services, develop, review, and as appropriate, revise IEPs to meet their needs, and implement those IEPs to ensure that all children have the opportunity to access educational opportunities. As noted previously in this letter, children with disabilities, particularly children with emotional and behavioral disorders, are disproportionately represented in the juvenile justice system and are therefore at risk of placement in the Detention Center and similar facilities. Providing children with disabilities with the special education, related services and supports that they need in school may prevent them from ever entering the Detention Center's front door.

It is in the best interests of the Detention Center children to resolve the IDEA violations there as expeditiously as possible. We hope you share our view that a collaborative approach by all parties would be most productive, and we are willing to engage in meaningful negotiations to address the Detention Center's IDEA violations. In light of the length of our investigation and the continued IDEA violations in spite of repeated notice, however, we cannot unduly delay filing for relief in federal court if a solution cannot be found promptly.

Please note that this letter is a public document. It will be posted on the Civil Rights Division's website.

As you know, our Special Litigation Section is handling this matter. The Chief of the Special Litigation Section, Steven H. Rosenbaum, may be reached at 202-514-4713, and Deputy Chief Shelley Jackson may be reached at 202-305-3373. Trial Attorney Ryan Wilson will be your primary contact, and he can be reached at 202-305-9937.

Sincerely,



Vanita Gupta
Principal Deputy Assistant Attorney General

Enclosure (2011 Findings Letter)

cc:

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