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

RE: XXXXX
Reference: #17-151

Dear Parties:

The Maryland State Department of Education, Division of Special Education/Early Intervention Services (MSDE, 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 25, 2017, the MSDE received a complaint from Grace Reusing, Esq., Office of the Public Defender, hereafter “the complainant,” on behalf of the above-referenced student. In that correspondence, the complainant alleged that the Maryland State Department of Education Juvenile Services Education System (JSES) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to the above-referenced student.

The MSDE investigated the following allegations:

1. The JSES did not ensure that the student was provided with the special education and related services required by the Individualized Education Program (IEP) while placed by the Maryland Department of Juvenile Services (DJS) at the XXXXXXXXXXXXXXXXXXXX XXXXXX (XXXX) from August 8, 2016 through August 26, 2016, in accordance with 34 CFR §§300.101 and .323.

2. The JSES did not ensure that the IEP was reviewed and revised to address lack of expected progress towards achievement of the goals within one year of their development while placed by the DJS at the XXXXXXXXXXXXXXXX (XXXXXXXXXXXX) from September 6, 2016 to March 1, 2017,¹ in accordance with 34 CFR §300.324.
3. The JSES did not follow proper procedures when reviewing and revising the IEP at XXXXXXXXXXXX on November 30, 2016, including the following:
 - a. Ensuring that the IEP contained annual goals based on the student's present levels of performance, in accordance with 34 CFR §300.320.
 - b. Ensuring that the IEP addresses the student's identified behavioral needs, in accordance with 34 CFR §300.324.
 - c. Ensuring that revisions to the special education and related services were based on the student's needs, in accordance with 34 CFR §300.324.
 - d. Ensuring that the parent was provided with proper written notice of the revisions made to the service providers and educational placement, in accordance with 34 CFR §300.503.
4. The JSES did not ensure that the student was provided with the special education and related services in the educational placement required by the IEP while placed by the DJS at XXXXXXXXXXXX from September 6, 2016 to March 1, 2017,¹ in accordance with 34 CFR §§300.101 and .323.
5. The JSES did not ensure that the student was provided with the opportunity to earn service learning hours necessary to progress towards the standards for graduation while he was placed by the DJS at XXXXXXXXXXXXXXXX from September 6, 2016 to March 1, 2017,¹ in accordance with COMAR 13A.03.02.05 and 13A.05.11.03.

INVESTIGATIVE PROCEDURES:

1. On May 26, 2017, the MSDE sent a copy of the complaint, via facsimile, to Ms. Beth Hart, Director, JSES.
2. On May 31, 2017, the MSDE sent correspondence to the complainant that acknowledged receipt of the correspondence containing allegations of violations of the IDEA and

¹ Although this date was listed in the State complaint and in the MSDE correspondence, dated May 31, 2017, as February 29, 2017, it should have been March 1, 2017.

identified the allegations subject to this investigation. On the same date, the MSDE notified the JSES of the allegations and requested that JSES review the alleged violations.

3. On June 16, 2017, the JSES provided documents to the MSDE for consideration.
4. On June 23, 2017, Ms. Anita Mandis, Section Chief, Complaint Investigation Section, MSDE, Ms. Linda Koban, Compliance Specialist, MSDE, and Ms. Dawn Hubbard, Compliance Specialist, JSES, met with XXXXXXXXXXXXXXXX, Principal, XXXXXXXXXXXXXXXXXXXX, by teleconference, and reviewed documents and discussed the allegations.
5. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
 - a. Behavioral Intervention Plan (BIP), reviewed on October 2, 2015 and December 2, 2015;
 - b. IEP, dated February 23, 2016;
 - c. JSES school calendar for the 2016-2017 school year;
 - d. Prior Written Notice document, dated September 16, 2016;
 - e. IEP, dated November 30, 2016;
 - f. Prior Written Notice documented, dated December 7, 2016;
 - g. Student Record Card 7 from the XXXXX;
 - h. IEP, dated March 16, 2017;
 - i. JSES Policy CI-4, Maryland Service Learning Requirements; and
 - j. Correspondence from the complainant alleging violations of the IDEA, received by the MSDE on May 25, 2017.

BACKGROUND:

The student is fifteen (15) years old, is identified as a student with an Other Health Impairment under the IDEA based on Attention Deficit Hyperactivity Disorder (ADHD), and has an IEP that requires the provision of special education instruction and related services (Doc. h).

From August 3, 2016 to August 26, 2016, the Maryland Department of Juvenile Services (DJS) placed the student at the XXXXXXXXXXXXXXXXXXXX (XXXX). The DJS enrolled the in the educational program provided by the JSES on August 8, 2016 (Docs. g, j, and review of the DJS placement summary).

From August 26, 2016 to March 1, 2017, the DJS placed the student at the XXXXXXXXXXXX XXXXXXXXXXXX (XXXXXXXXXX), where the educational program is provided by the JSES (Doc. j and review of the DJS placement summary).

The student is currently attending Antietam Academy, a school that serves as an alternative education setting within the Washington County Public Schools (WCPS) (Doc. h and review of a March 2, 2017 request for records from the WCPS to XXXXXXXX).

ALLEGATIONS #1 - #4

IEP DEVELOPMENT AND IMPLEMENTATION

FINDINGS OF FACTS:

XXXXX

1. On August 4, 2016, the staff at the XXXXX requested the student's educational record from his previous school in preparation for his enrollment in the education program at that facility (Review of the educational record).
2. On August 8, 2016, the student was enrolled in the education program at the XXXXX and the XXXXXXX received the educational record (Doc. g and review of the educational record).
3. On August 9 and 10, 2016, the student's IEP was distributed to his teachers and the school psychologist at the XXXXX (Review of signed receipt of the IEP by teachers and service provider).
4. At the time of his enrollment in the education program at the XXXX, the student had an IEP that was developed by the Washington County Public Schools (WCPS IEP). The WCPS IEP required the student to achieve goals to improve skills in the areas of reading comprehension, written language expression, and self-management by December 1, 2016. It required the provision of thirty-two hours and fifty-five minutes per week of special education instruction to assist the student in achieving the goals, and indicated that the services were to be provided primarily by a special education teacher with assistance from a licensed clinical or graduate social worker, licensed clinical or graduate professional counselor,² instructional assistant, or therapeutic behavioral aide (Doc. b).
5. The WCPS IEP also required the provision of two sessions per week of individual counseling services for thirty minutes per session and one session per week of counseling services for one hour per week of group counseling services. It indicated that the services were to be provided by a licensed clinical or graduate social worker or licensed clinical or graduate professional counselor² (Doc. b).

² These are professionals who are qualified to provide psychotherapy and other counseling services (<https://health.maryland.gov/bopc>).

6. The WCPS IEP further required the provision of checks for understanding, breaking down of assignments into smaller units, previewing questions before reading, repetition of directions, the ability to earn rewards using a behavior point sheet, and crisis intervention services involving access to staff trained in verbal de-escalation and non-violent crisis intervention. In addition, the WCPS IEP required the provision of specialized transportation services, including a bus aide to address behavioral needs (Doc. b).
7. The WCPS IEP included the requirement that a Behavioral Intervention Plan (BIP) be implemented. The BIP stated that the student demonstrated noncompliant and off-task behaviors that cause disruption in learning when he was not on medication and when he was asked to comply with classroom expectations. The BIP included prevention strategies of seeking positive peer and adult attention through compliance and reduced verbal aggression and increased participation. It included teaching strategies of the provision of nonverbal redirections, direction for appropriate choice making and coping, the provision of cues to recognize anger and frustration, and direction for the use of calming techniques. It also included response strategies of providing redirection in a calm manner to comply away from peers, providing reminders of expectations, discussion of the relevance of school work, loss of points for noncompliance, contacts to the student's home, use of "restorative practices," use of an alternative classroom setting for self-reflection and de-escalation, and school disciplinary actions. The BIP further indicated that the school staff would collect data on the student's progress on a daily basis (Doc. a).
8. The WCPS IEP stated that the Least Restrictive Environment (LRE) in which the special education and related services could be provided was in a nonpublic separate special education school "due to severity of behavioral concerns" and the student's need for "special education services in a small group setting with behavior, instructional, and therapeutic support." The IEP team documented that the student would not be able to participate with nondisabled peers in the placement, but that the potential academic and social/emotional gains of the placement outweighed any potential harmful effects (Doc. b).
9. The student's last progress reports prior to his placement at the XXXXXX, dated June 9, 2016, reflect that, while he was frequently out of the classroom due to behavior problems and was often off task in the classroom, he was making sufficient progress to achieve the goals by December 1, 2016 (Doc. b).
10. The student's teachers at the XXXXX maintained daily attendance logs from August 8, 2016 to August 26, 2016 that demonstrate that the student was given the opportunity to earn points for good behavior. However, the teachers reported that the student demonstrated excessive talking, off-task, and disruptive behavior in class (Review of daily attendance sheets and progress reports).

11. The daily attendance logs from August 8, 2016 to August 26, 2016 reflect that the student was assigned to receive instruction in a separate special education classroom, but refused to leave the general education classroom, and was therefore provided with instruction in that setting. The logs indicate that there were between seven and eleven students in the student's class, along with a teacher and DJS staff³ (Review of daily attendance sheets).
12. The school psychologist's service logs reflect that attempts were made to provide counseling services to the student for the first two weeks of his three week educational placement at the XXXXX, but that the student refused the services. There is no documentation of an attempt to provide counseling services during the last week of the student's educational placement at the XXXX (Review of the school psychologist's service logs).

XXXXXXXXXXXX

13. On August 26, 2016, the DJS placed the student at XXXXXXXXXXXX. However, the student did not begin school until September 6, 2016 because school was not in session between August 26, 2016 and September 6, 2016 (Docs. c and j).
14. On August 25, 2016, the staff from XXXXXXXXXXXX requested the educational record from the XXXXX, in preparation for the student's transfer to the facility. Documents from the educational record were received by XXXXXXXXXXXX on August 26, 2016 and September 1, 2016 (Review of the educational record).
15. On September 1, 2016, the student's IEP was distributed to his teachers and the school psychologist at XXXXXXXXXXXX (Review of signed receipt of the IEP by teachers and service provider).
16. The school staff at XXXXXXXXXXXXX maintained a log of daily attempts by the special education teacher to remove the student from the classroom for the provision of instruction and the student's refusal to work outside of the classroom (Review of special education teacher's logs).
17. On September 16, 2016, the IEP team convened at XXXXXXXXXXXXXXXX. The school psychologist provided a summary of assessments conducted by the WCPS in 2013, information about the student's classroom performance, and the BIP completed on October 2, 2015.⁴ The IEP team considered the information from the school psychologist that the student can be assisted in achieving the self-management goal through two

³ The DJS implements a behavior program in all of its facilities throughout the day, including during the school day. This program provides positive reinforcement through DJS staff who are trained to teach and model problem solving and social skills. Mental health treatment, including crisis intervention and counseling, is provided in the DJS facilities by the DJS Behavioral Health Services (*Maryland Department of Juvenile Services Data Resource Guide*).

⁴ This BIP was reviewed, but not revised by the WCPS IEP team on December 2, 2015 (Doc. a).

sessions of direct or indirect services for thirty minutes per week with indirect services to ensure the generalization of skills taught within the direct services of counseling sessions. The team also considered the recommendation of the school psychologist that the student receive shorter service times for individual counseling to mitigate off-task behavior and minimize distractions “while also considering [the student’s] observed stamina at this point in time.” Based on this information, the IEP team decided that the student would be provided with one hour per week of individual counseling and indirect services to ensure the generalization of skills taught during counseling sessions (9/16/16 PWN).

18. At the September 16, 2016 IEP team meeting, the IEP team discussed that in the nonpublic separate special education school, the student received instruction in a classroom of fourteen students or less, with a special education teacher, an instructional assistant, and a licensed social worker who provided counseling services. The IEP team further discussed that the student was currently placed in a secure facility that focuses on behavior management, where classrooms are composed of both disabled and non-disabled students numbering ten or less that are taught by a general educator, with support from a special education teacher, and at least one DJS staff member who monitors behavior and provides crisis intervention services. The team also noted that there is a school psychologist on staff who can provide counseling and coordinate services to manage classroom behavior (Doc. d).
19. Based on this information, on September 16, 2016, the IEP team decided that thirty hours of special education instruction in the general education classroom provided primarily by a general education teacher plus one hour per week of counseling services at XXXXX XXXXXXXX were comparable to the services provided in the nonpublic separate special education placement. The team also decided that transportation services were not required since the student attended school on the grounds of the residence (Doc. d).
20. On October 4, 2016, the revised IEP was distributed to the student’s teachers and the school psychologist (Review of the signed receipt of the IEP by the teachers and service provider).
21. On November 30, 2016, the IEP team at XXXXXXXXXXXXX reconvened to conduct an annual review of the IEP. The team considered reports of the student’s current classroom performance. The information included the following:
 - a. The student continues to have problems with behavior and attention, which impact his reading stamina, but once he becomes focused, he is able to complete reading assignments with the provision of assistance with unknown words. While the student’s spelling is weak, he has developed good context skills for understanding sentences and passages.
 - b. The student uses a calculator in math class to assist him with basic math facts and computations, which helps to lessen his frustration and keep him on task.

- c. The student requires assistance with spelling unknown words, but is able to generate thoughts and sentences with phonemic spellings of words so that his overall meaning is understood (Docs. e and f).
22. While the previous WCPS IEP included information from assessments regarding the grade levels in which the student was performing in reading and math, the IEP revised on November 30, 2016 does not include this information (Docs. b and e).
23. At the November 30, 2016 IEP team meeting, the team documented that it considered information from the student's teachers that the student was making progress towards achievement of the annual IEP goals and was earning passing grades in all classes. However, while the goals were to be achieved by December 1, 2016, the student had not achieved them by that time. The team added a new short-term objective within the goal to improve written language expression in order to increase the complexity of the student's writing. The remaining goals were continued and the IEP continued to reflect that they were to be achieved by December 1, 2016 without explanation (Doc. f and review of the November 17, 2016 progress reports).
24. At the November 30, 2016 IEP team meeting, the team documented that the student was no longer arguing with peers or staff, but that he had been refusing individual counseling sessions (Doc. f and review of November 17, 2016 progress reports).
25. At the November 30, 2016 IEP team meeting, the team documented the decision that the BIP and accommodations and supplementary aids and services remained appropriate. The team also decided to reduce the amount of counseling to thirty minutes per week of indirect services to ensure the generalization of skills that had been learned, and to make direct counseling services available to the student upon his request. The IEP was also revised to reflect the IEP team's September 16, 2016 decision that the IEP could be implemented in the general education classroom where education instruction is provided primarily by a general education teacher with the assistance of a special education teacher (Docs. d, e, and f).
26. There is documentation that the student participated in the November 30, 2016 IEP team meeting and reported that he does not know what he wants to do after high school, but has an interest in assisting people, perhaps as an advocate. Based on that information, the team developed postsecondary goals in the areas of employment and education, determined that the course of study in high school would be Education, Training, and Child Studies, and that the student would be reviewing and exploring careers with the guidance counselor in his Career Research and Development class (Docs. e and f).
27. The communication log that is maintained in the student's educational record contains a notation that, on December 7, 2016, the revised IEP and written summary of the IEP team meeting were mailed to the student's mother (Review of the communication log).

28. The educational record includes documentation that, on December 8, 2016, the student's teachers and the school psychologist signed for receipt of the revised IEP (Review of the signed receipt of the IEP by teachers and the service provider).
29. On January 30, 2017, the school staff at XXXXXXXXXXXX issued reports reflecting that the student was making sufficient progress towards achievement of the IEP goals. However, the IEP continued to state that the goals were to be achieved by December 1, 2016 (Review of the educational record).
30. Following his placement at XXXXXXXXXXXX, the DJS released the student back into the community, at which time he was re-enrolled in the WCPS (Review of the educational record).
31. The student's teachers at XXXXXXXXXXXX maintained daily attendance logs from September 13, 2016 to February 24, 2017 that demonstrate that the student was provided with the opportunity to earn points for good behavior (Review of daily attendance sheets).
32. The log of counseling services reflects that the student was offered but often refused the services of the school psychologist (Review of school psychologist's service logs).
33. On March 16, 2017, the WCPS convened at IEP team. At the meeting, the IEP team noted that the student had not achieved the annual IEP goals due to "negative/avoidant behaviors." However, the IEP team decided to continue the goals until November 29, 2017, at which time the effectiveness of the BIP would be considered. Due to the student's history of refusing counseling services, the IEP team also decided that the student would continue to be offered individual counseling and would be provided with weekly indirect services. The team further decided that the student would receive instruction with nondisabled peers at the alternative school if his behavioral needs can be met in that setting (Doc. h).
34. A progress report, dated June 1, 2017, states that the student is not making sufficient progress towards achievement of the goals by November 29, 2017 and that an IEP team meeting needs to convene to consider the lack of expected progress (Doc. h).

DISCUSSION/CONCLUSIONS:

Allegation #1 IEP Implementation at the XXXX from August 8, 2016 through August 26, 2016

Each public agency must ensure that students are provided with the special education and related services required by the IEP. In order to do so, the public agency must ensure that the IEP is written in a manner that is clear with respect to the special education and related services that are to be provided (34 CFR §§300.101, .320 and .323).

If a student with an IEP transfers to a new public agency within the State, the new public agency (in consultation with the parents) must provide the student with a Free Appropriate Public Education (FAPE), including services comparable to those described in the student's IEP from the previous public agency, until the new public agency either adopts the IEP from the previous public agency or revises the IEP (34 CFR §300.323).

In order to ensure the provision of appropriate services to a transferring student, the new public agency must take reasonable steps to promptly obtain the student's educational record, including the IEP and supporting documents and any other records relating to the provision of special education or related services to the student, from the previous public agency in which the student was enrolled (34 CFR §300.323).

In order to ensure proper student records management, the local public agencies in the State are required to maintain educational records consistent with the *Maryland Student Records System Manual* (COMAR 13A.08.02.01 and .02). The JSES is required to implement procedures to obtain, maintain, and share student records consistent with this requirement (COMAR 13A.05.11.09).

In this case, the complainant alleges that the JSES did not ensure that the student was provided with special education and related services in the educational placement required by the IEP while the DJS placed him at the XXXX from August 8, 2016 through August 26, 2016 (Doc. j).

Based on the Findings of Facts #1 - #3, the MSDE finds that the XXXX properly obtained the student's educational record when he transferred into the JSES. Based on the Findings of Facts #3, #4, and #6 - #11, the MSDE finds that there is documentation that the student was offered special education instruction in the educational placement required by the IEP, but that the student refused to receive instruction in that setting. However, based on those Findings of Facts, the MSDE finds that the student was provided with special education instruction and supports to address the annual IEP goals in the setting in which the student would accept those services. Therefore, no violation is found with respect to this aspect of the allegation.

Based on the Findings of Facts #5 and #12, the MSDE finds that there is no documentation that the counseling was attempted during the last week of the student's placement at the XXXX after he refused counseling during the first two weeks of his placement. Therefore, this office finds a violation with respect to this aspect of the allegation.

Notwithstanding the violation, based on the Findings of Facts #25 and #33, the MSDE finds that the IEP teams at XXXXXXXXXXXX and within the WCPS subsequently determined that it was inappropriate to attempt to force the student to accept those services. Therefore, no corrective action is required.

Allegation #2 Review and Revision of the IEP to Address Lack of Expected Progress

The public agency must ensure that the IEP team reviews the IEP periodically, but not less than annually, to determine whether the annual goals are being achieved. In addition, the public

agency must ensure that the IEP team revises the IEP, as appropriate, to address any lack of expected progress toward achievement of the annual IEP goals (34 CFR §300.324).

In this case, the complainant alleges that the IEP goals were continued from one year to another without review and revision to address the student's lack of achievement of the goals within one year of their development (Doc. j).

Based on the Findings of Facts #9 and #23, the MSDE finds that the IEP goals were continued beyond one year from the date of their development, without an explanation for why they continued to remain appropriate. Therefore, this office finds that a violation occurred.

Notwithstanding the violation, based on the Finding of Fact #33, the MSDE finds that, upon the student's transfer to a community-based school from the JSES, the WCPS IEP team has determined that the goals should be continued despite the student's lack of sufficient progress. Therefore, no student-specific corrective action is required.

Allegation #3 November 30, 2016 Revisions to the IEP

In order to provide a student with a FAPE, the public agency must ensure that an IEP is developed that addresses all of the needs that arise out of the student's disability that are identified in the evaluation data. In developing each student's IEP, the public agency must ensure that it includes a statement of the student's present levels of performance, including how the disability affects the student's progress in the general curriculum. The IEP must also include measurable annual goals designed to meet the needs that arise out of the student's disability, and the special education instruction and related services required to assist the student in achieving the goals (34 CFR §§300.101 and .320).

The IEP team's determination of how the student's disability affects the student's involvement and progress in the general education curriculum is a primary consideration in the development of the annual IEP goals. While the goals should align with the grade level general education curriculum standards, they are used to estimate the outcomes that can be expected in an academic year based on the student's present levels of performance. Therefore, the IEP team must determine how instruction will be modified based on the student's levels of performance in order to enable the student to achieve the goals and participate and progress in the general curriculum (34 CFR §§300.101 and .320, Analysis of Comments and Changes to the IDEA regulations, *Federal Register*, Vol. 71, No. 156, p. 46662, August 14, 2006 and *Maryland Statewide Individualized Education Program Process Guide*).

In developing each student's IEP, the public agency must ensure that the IEP team considers the strengths of the student, the concerns of the parents for enhancing the education of the student, the results of the most recent evaluation, and the academic, developmental, and functional needs of the student. In the case of a student whose behavior impedes the student's learning or that of

others, the IEP team must consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior (34 CFR §300.324).

The public agency must also ensure that the educational placement is made by the IEP team and is based on the IEP. The educational placement may not be based solely on the factors such as the configuration of the service delivery system, availability of staff, or administrative convenience, and the public agency must ensure that a student is not removed from age-appropriate regular classrooms solely because of needed modifications in the general education curriculum (34 CFR §300.116, COMAR 13A.05.01.10, and *Letter to Clay*, United States Department of Education, Office of Special Education Programs, 23 IDELR 341, May 17, 1995).

Written notice must be provided to parents within a reasonable time before the public agency proposes or refuses to initiate or change the identification, evaluation, or educational placement of students or the provision of a FAPE to students. This notice must include information about the decisions made, the basis for the decisions, the data used when making the decisions, and the options considered by the team (34 CFR §300.503). The purpose of providing prior written notice is to ensure that parents have sufficient information in order to determine whether they wish to exercise their right to access the dispute resolution procedures if they disagree with the IEP team's decisions.

In this case, the complainant alleges that revisions were made to the IEP with respect to the service providers, the amount of services to be provided, and educational placement in which those services would be received without the provision of proper written notice of the revisions being proposed (Doc. j).

Based on the Findings of Facts #21, #23, #25, and #27, the MSDE finds that proper written notice of the team's November 30, 2016 decisions were sent to the student's parent through a written summary of the meeting and the revised IEP document. Therefore, this office does not find that a violation occurred with respect to this aspect of the allegation.

The complainant also alleges that, while the JSES convened the IEP team on November 30, 2016 for the purpose of reviewing and revising the IEP, it did not consider the student's present levels of performance. The complainant alleges that revisions made to the amount of services to be provided, the providers of services, and the educational placement were based on the service delivery system and not on the student's current needs. The complainant further alleges that the IEP team did not address the student's interfering behaviors at the meeting (Doc. j).

Based on the Findings of Facts #16, #17, #19, #21, and #23 - #26, the MSDE finds that the IEP team considered the student's behavioral functioning at the November 30, 2016 IEP team meeting and made revisions to the IEP based upon information from the student and his teachers and service providers. Therefore, this office does not find that a violation occurred with respect to the remaining aspects of the allegation.

However, based on the Findings of Facts #22, #23, #29, #33, and #34, the MSDE finds that the IEP team considered the student's classroom performance on the skills being addressed by the IEP goals, but did not document consideration of the grade levels in which the student was currently performing when it decided to continue the annual IEP goals. As a result, there was no consideration of why the student had not achieved the annual IEP goals that should have been achieved by December 1, 2016. Therefore, this office finds that a violation occurred with respect to this aspect of the allegation.

Notwithstanding the violation, based on the Findings of Facts #30 and #33, as stated above, upon the student's transfer to a community-based school from the JSES, the WCPS IEP team has determined that the goals should be continued despite the lack of achievement of those goals within one year from the date that they were developed. Therefore, no student-specific corrective action is required.

Allegation #4 IEP Implementation at XXXXXXXXXXXX from September 6, 2016 to March 1, 2017

As stated above, each public agency must ensure that students are provided with the special education and related services required by the IEP (34 CFR §§300.101 and .323).

In this case, the complainant alleges that the JSES did not ensure that the student was provided with special education and related services in the educational placement required by the IEP while the DJS placed him at XXXXXXXXXXXX from September 6, 2016 to March 1, 2017. The complainant asserts that this is because the school does not have the resources, including space and staffing, to provide special education instruction in a separate special education classroom (Doc. j).

Based on the Findings of Facts #13 - #15, the MSDE finds that XXXXXXXXXXXXXXXX properly obtained the student's educational record from the XXXX. Based on the Findings of Facts #15 - #18, #20 - #23, #28, #29, and #31, the MSDE finds that there is documentation that the student was offered special education instruction in the educational placement required by the IEP, but that the student refused to receive instruction in that setting. However, based on those Findings of Facts, the MSDE finds that the student was provided with special education instruction and supports to address the annual IEP goals in the setting in which the student would accept those services. Therefore, no violation is found with respect to this aspect of the allegation.

Based on the Finding of Fact #32, the MSDE finds that counseling services were offered but refused. Therefore, this office does not find a violation with respect to this aspect of the allegation.

**ALLEGATION #5: OPPORTUNITY TO EARN SERVICE LEARNING HOURS
AT XXXXXXXXXXXX FROM SEPTEMBER 6, 2016 TO
MARCH 1, 2017**

FINDINGS OF FACTS:

35. All public agencies in Maryland, including the JSES, have chosen to design local programs in student service to address their unique academic and community needs. Some school systems require that students conduct independent service-learning projects to fulfill part of the graduation requirement. In these school systems, students are given guidelines stating how much service is expected and which organizations are appropriate sites for service. They infuse service-learning into existing courses as all or part of their plan. In most cases, students complete all service learning elements – preparation, action, and reflection – as part of their regular school day. In other school systems, students carry out one or more elements as part of a class and perform the remaining elements on their own after school or on weekends (<http://marylandpublicschools.org>).
36. The JSES’ service learning plan indicates that students in grades 7 – 12 participate in both school-wide and content-based service-learning projects, which are extended instructional activities that expand academic concepts taught in the classroom. Students entering a DJS facility become engaged in ongoing content-based academic projects with instruction provided at their individual levels of performance. Service-learning plans are implemented by principals by assisting with projects plan development, ensuring that plans are executed as designed, monitoring implementation, supervising staff involved in plan execution, ensuring that students complete the required reflection essay, and overseeing documents of student service-learning hours (Doc. i and <http://marylandpublicschools.org>).
37. There is documentation that the student participated in a service learning project that involved assisting with a fundraiser for a charitable organization in Garrett County that provides advocacy and counseling for victims of domestic violence. The student was on the roster of students who worked were transported to the Garrett County Fairgrounds on November 27, 2016 to participate in the project. However, the student did not earn service learning hours because he did not complete the service learning reflection component of the project (Review of project itinerary and roster of students participating in the project).

DISCUSSION/CONCLUSIONS:

To be awarded a Maryland High School Diploma, a student must engage in service learning experiences. Service learning is a teaching method that combines meaningful service to the community with curriculum-based learning (COMAR 13A.03.02.05).

The JSES is required to provide a comprehensive education program for youth in DJS facilities to meet the public school standards. This program must consist of instruction to allow students to achieve credit requirements necessary to progress towards the standards for graduation consistent with the requirements in COMAR 13A.03.02 (COMAR 13A.05.11.03).

In this case, the complainant alleges that there were no service learning experiences offered at XXXXXXXXXXXX while the student was placed in the facility from September 6, 2016 to March 1, 2017 (Doc. j).

Based on the Findings of Facts #35 - #37, the MSDE finds that the documentation does not support the allegation. Therefore, no violation is identified with respect to the allegation.

CORRECTIVE ACTIONS/TIMELINES:

The MSDE requires that the JSES provide documentation by the start of the WCPS' 2017-2018 school year that it has contacted the WCPS and offered to participate in the next IEP team meeting for the student in order to share any information needed about the student's performance.

The MSDE requires that the JSES provide documentation by October 1, 2017 of steps taken to ensure that the XXXXXXXXXXXX staff comply with the requirements to do the following:

- a. Ensure that information on the student's current grade levels of performance are determined when conducting an annual IEP review in order to properly measure student progress on the skills addressed by the IEP goals.
- b. Ensure that reports of student progress on IEP goals accurately reflect whether the progress is sufficient to anticipate that the student will achieve the goals within one year of their development.
- c. Ensure that IEP teams document the basis for continuing goals when insufficient progress has been made to achieve them within one year of development.

The documentation must include a description of how the JSES will evaluate the effectiveness of the steps taken and monitor to ensure that the violations do not recur.

TECHNICAL ASSISTANCE:

Technical assistance is available to the parties through Dr. Nancy Birenbaum, MSDE. Dr. Birenbaum may be contacted at (410) 767-0255.

Please be advised that the complainant and the JSES have the right to submit additional written documentation to this office, which must be received within fifteen (15) days of the date of this

Grace Reusing, Esq.
Ms. Deborah Grinnage-Pully
July 7, 2017
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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. Upon consideration of this additional documentation, this office may leave its findings and conclusions intact, set forth additional findings and conclusions, or enter new findings and conclusions. Pending the decision on a request for reconsideration, the JSES must implement any corrective actions consistent with the timeline requirements as reported in this Letter of Findings.

Questions regarding the findings of facts, conclusions, and corrective actions contained in this letter should be addressed to this office in writing. The student's parents and the JSES 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/am

c: XXXXXX
 Beth Hart
 Crystal Fleming-Brice
 Anna Lisa Nelson
 Dawn Hubbard
 XXXXXXXXX
 XXXXXXXXXXXXXXXXXX
 Dori Wilson
 Anita Mandis
 Nancy Birenbaum
 Elizabeth Kameen
 Elliott L. Schoen
 Alan Dunklow