



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

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June 27, 2017

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

RE: XXXXX  
Reference: #17-061

Dear Parties:

The Maryland State Department of Education (MSDE), Division of Special Education/Early Intervention Services (DSE/EIS), has completed the investigation of the complaint regarding special education services for the above-referenced student. This correspondence is the report of the final results of the investigation.

**ALLEGATIONS:**

On November 7, 2016, the MSDE received a complaint from Ms. Grace Reusing, hereafter, “the complainant,” on behalf of the, 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.

Due to the addition of allegations involving other school systems during the course of the investigation, it was necessary to extend the sixty (60) day timeline for completion of this Letter of Findings, pursuant to 34 CFR §300.152.

The MSDE investigated the following allegations:

1. The JSES did not ensure that the student was provided with special education instruction, as required by his Individualized Educational Program (IEP), while he was placed by the Maryland Department of Juvenile Services (DJS) at the XXXXXXXXXXXXXXXX (XXX), from April 11, 2016 to June 6, 2016 and July 11, 2016 to August 23, 2016, in accordance with 34 CFR §§300.101 and .323.
2. The JSES did not ensure that the student was provided with counseling services, as required by the IEP, while he was placed by DJS at the XXX from April 11, 2016 to June 6, 2016 and July 11, 2016 to August 23, 2016, in accordance with 34 CFR §§300.101 and .323.
3. The JSES did not ensure that the student was provided with special education instruction by teachers who hold a valid Maryland certification in the areas of instruction at the XXX, from April 11, 2016 to June 6, 2016 and July 11, 2016 to August 23, 2016, in accordance with 34 CFR §§300.18, .101, .156, .323, and COMAR 13A.05.11.07 and 13A.12.01.01.
4. The JSES did not ensure that the IEP team reviewed and revised, as appropriate, the student's IEP to address lack of expected progress toward achieving the IEP goals in April 2016, in accordance with 34 CFR §300.324.
5. The JSES did not ensure that the student was provided with the opportunity to complete courses that he had begun taking and did not ensure that he was enrolled in courses for which he had not earned credit, in order to allow him to work to achieve credit requirements necessary to progress towards the standards for graduation while he was placed by the DJS at the XXX from April 11, 2016 to June 6, 2016 and July 11, 2016 to August 23, 2016, in accordance with 34 CFR §§300.101, .149, and COMAR 13A.03.02 and 13A.05.11.
6. The JSES did not ensure that the student's educational record was maintained while he was placed by the DJS at the XXX from April 11, 2016 to June 6, 2016 and July 11, 2016 to August 23, 2016, in accordance with COMAR 13A.05.11 and 13A.08.02.

During the course of the investigation, the following additional allegations were also identified:

7. The Anne Arundel County Public Schools (AACPS) did not ensure that the student's educational record was accurately maintained from November 2015 to April 2016, in accordance with COMAR 13A.05.11 and 13A.08.02.
8. The Baltimore County Public Schools (BCPS) did not ensure that the student's educational record was accurately maintained from November 2015 to April 2016, in accordance with COMAR 13A.05.11 and 13A.08.02.

**INVESTIGATIVE PROCEDURES:**

1. On November 9, 2016, the MSDE sent a copy of the complaint, via facsimile, to Ms. S. Beth Hart, Director, JSES.
2. On November 16, 2016, the complainant provided the MSDE with additional documentation.
3. On November 17, 2016, Mr. Gerald Loiacono, Complaint Investigator, MSDE, conducted a telephone interview with the complainant and identified the allegations for investigation.
4. On November 21, 2016, the MSDE sent correspondence to the complainant that acknowledged receipt of the complaint and identified the allegations subject to this investigation. On the same date, the MSDE notified the JSES of the allegations and requested that the school system review the alleged violations.
5. On November 29, 2017, the MSDE requested documents from the JSES.
6. On December 5, 2016, Mr. Loiacono met with Ms. Dawn Hubbard, Compliance Specialist, JSES, and requested documentation.
7. On December 9, 2016, the MSDE requested documentation from the AACPS.
8. On December 16, 2016, the MSDE identified an additional allegation involving the AACPS. On the same date, the MSDE sent correspondence to the complainant and Ms. Bobbi Pedrick, Director of Special Education, AACPS, notifying the school system of the allegation and requesting that the school system review the alleged violations.
9. On December 16, 2016, the AACPS provided the MSDE with documentation.
10. On December 27, 2017, Mr. Loiacono again met with Ms. Hubbard, reviewed documentation, and requested that the JSES provide additional documentation.
11. On January 4, 2017, the JSES provided the MSDE with additional documentation.
12. On January 11, 2017, the MSDE identified additional an allegation involving the Baltimore County Public Schools (BCPS). On the same date, the MSDE sent correspondence to the complainant and Ms. Rebecca Rider, Director of Special Education, BCPS notifying the school system of the allegation and requesting that the school system review the alleged violation.
13. On February 2, 2017, Mr. Loiacono, Mr. Albert Chichester, Complaint Investigator, MSDE, Ms. Anita Mandis, Section Chief, Complaint Investigation Section, MSDE, and met with Ms. Toimbe Olumiji, Special Education Coordinator, JSES, and Ms. Hubbard, to discuss the allegations.

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14. On February 23, 2017, the JSES provided additional documentation to the MSDE.
15. On March 5, 2017 the MSDE requested documentation from the BCPS staff.
16. On March 9, 2017, the JSES provided additional documentation to the MSDE.
17. On April 26, 2017, and May 24, 2017, Mr. Loiacono and Ms. Conya Bailey, Supervisor of Compliance, BCPS, discussed the allegation pertaining to the BCPS.
18. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
  - a. IEP, dated October 27, 2015;
  - b. JSES "Record Review Team Meeting" form, dated July 11, 2016;
  - c. Department of Juvenile Services (DJS) Student Placement Summary, undated;
  - d. Related Service Log, dated April 25, 2016 to August 19, 2016;
  - e. Student Transcripts, dated September 30, 2015;
  - f. Student Transcripts, dated May 14, 2015;
  - g. Student Record Card 7, dated September 13, 2016, revised November 28, 2016;
  - h. Student Record Card 7, generated June 6, 2016, revised November 22, 2016 ;
  - i. JSES Counseling make-up form letter, undated;
  - j. Correspondence between the complainant and JSES staff, dated January 10, 2017;
  - k. Consent for release of confidential information form for the provision of counseling make-up sessions, dated January 10, 2017;
  - l. JSES related service plan for XXX, dated January 2, 2017;
  - m. *JSES Special Education Policy and Procedures* in effect since August 10, 2014;
  - n. *JSES Fourth Quarter Report and 2016 Annual Review of Facilities*; and
  - o. Correspondence from the complainant containing allegations of violations of the IDEA, received by the MSDE on November 7, 2016.

**BACKGROUND:**

The student is 18 years old, is identified as a student with an Emotional Disability under the IDEA, and has an IEP that requires the provision of special education instruction and related services. He is currently placed by the AACPS at the XXXXXXXX, a non-public special education school (Doc. a).

Between April 4, 2016 and August 23 2016, the time period covered by this investigation, the student was placed by the DJS as follows:

- April 4, 2016 to June 6, 2016 at the XXX;
- June 14, 2016 to July 1, 2016 at XX;  
and
- July 1, 2016 to August 23, 2016 at the XXX.

## **ALLEGATIONS #1 - #3: IEP DEVELOPMENT AND IMPLEMENTATION**

### **FINDINGS OF FACTS:**

1. The student's IEP, in effect when the DJS placed him at the XXX on April 4, 2016, required that he receive special education instruction primarily by the special education teacher outside of the general education setting in "a classroom setting with a small student to teacher ratio that is highly structured and has therapeutic social emotional/behavioral supports"  
(Doc. a).
2. There is documentation that the staff at XXX reviewed the student's IEP at the time of his entry into the facility. The review of the student's IEP noted the required special education instruction and classroom supports required by his IEP. The completed form notes that his IEP was "accepted without changes" (Doc. b)
3. There is documentation that the student received instruction in a classroom with between five (5) to ten (10) students that was taught by a general education teacher with support from special education teachers. However, there is no documentation that the instruction was consistently or primarily provided by a special education teacher (Doc. a, and a review of the student's records).
4. There is no documentation that the teachers who provided instruction were either certified or supervised by certified staff in each content area of instruction or in special education. (Review of the JSES certification records).
5. The JSES acknowledges that non-certified teachers at the XXX were not supervised by teachers who hold certification in the areas of instruction provided until October 2016 (Docs. l, n, and o, Review of student's record,).
6. There is documentation that efforts are being made by JSES to recruit and retain certified teachers and that non-certified teachers are now being supervised by certified staff while vacancies are being filled (Docs. m and n)
7. There is documentation that the student was occasionally provided instruction while assigned to the Intensive Services Unit (ISU)<sup>1</sup>. However, there is no documentation that instruction was consistently provided to the student (Review of student's record).

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<sup>1</sup> The ISU is "a restrictive housing unit where youth allegedly involved in incidents of aggression while in the facility are sometimes housed. One of the purposes of the ISU is to provide youth with more intensive therapeutic supports and services in accordance with their individual needs." (Juvenile Justice Monitoring Unit, First Quarter Report, 2017)

8. There is documentation that the student did not attend classes when DJS facility staff did not make him available to JSES staff for instruction, or when the school was on a scheduled two-week break (Review of JSES records, Review of student's record)
9. There is documentation that the student was provided with counseling as a related service while at the XXX, with the exception of three (3) sessions, while he was assigned to the ISU. The JSES staff have explained that services were missed due to an error on the part of staff, and that responsible staff have received appropriate guidance on related services provision for students in the ISU (Docs. d and i).
10. There is documentation that the JSES staff have attempted to contact the student's parent and similarly-situated students to arrange for compensatory counseling sessions to address this loss of service (Docs. i-k).

### **DISCUSSION/CONCLUSIONS:**

#### **Allegation #1: Provision of Special Education Instruction**

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).

If a student with an IEP in effect in one public agency enrolls in another public agency, the new public agency must implement the IEP from the previous public agency or provide comparable services until the new public agency revises the IEP (34 CFR §300.323).

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

In this case, the complainant alleges that the student was not provided with special education instruction, in a separate special education classroom, as required by the IEP.

Based on the Finding of Facts #1 - #3, the MSDE finds that the student was not provided with special education services primarily by a special education teacher outside of the general education classroom, as required by the IEP. The MSDE further finds that the IEP was not implemented as written or that the IEP team determined that the services that were provided were comparable to those that were required. Therefore, this office finds that a violation occurred with respect to the allegation.

#### **Allegation #2: Provision of Counseling Services**

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).

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Based on Finding of Fact #9, the MSDE finds that the student was not consistently provided the counseling services required by the student's IEP. Therefore, this office finds that a violation occurred with respect to the allegation.

Notwithstanding that violation, based on Finding of Fact #10, the MSDE further finds that the JSES has offered compensatory counseling services to the student and other similarly-situated students, and has provided guidance to staff regarding the delivery of related services to students assigned to the ISU. Therefore, no further corrective action is required with respect to this violation.

### **Allegation #3: Instruction from certified teachers**

The IDEA requires that each State Education Agency (SEA) establish and maintain qualifications to ensure that necessary personnel are appropriately and adequately prepared and trained, including that those personnel have the content knowledge and skills to serve students with disabilities. The SEA must further adopt a policy that includes a requirement that Local Education Agencies (LEAs) take measurable steps to recruit, hire, train, and retain qualified personnel to provide special education and related services (34 CFR §300.156).

The JSES is required to ensure that instruction is provided by personnel with valid Maryland Educator Certificates so that the educational staff possess the minimum essential knowledge and skills needed to achieve outcomes for public education and maintain competent practice through career-long engagement with their content area (COMAR 13A.05.11.07 and 13A.12.01.01).

The *JSES Special Education Policy and Procedures* states that, in the event that a content area teacher is not available to provide instruction for an extended period of time, a qualified teacher will provide oversight to the staff designated to provide instruction. This involves "regular collaborative planning" with the staff providing instruction and "periodic classroom observations by the principal to ensure instruction is aligned with College and Career Ready Standards."

In this case, the complainant alleges that the JSES did not ensure that instruction is provided by personnel who hold valid Maryland Educator Certificates in the areas which they provide instruction.

Based on the Finding of Fact #4, the MSDE finds that the JSES did not ensure that the teachers have been certified in the areas which they provided instruction or were supervised by teachers holding certification prior to October 2016. Therefore, this office finds that a violation occurred with respect to the allegation.

However, based on the Findings of Facts #5 and #6, the MSDE finds that procedures have subsequently been implemented for ensuring supervision of non-certified teachers. Therefore, no further correction action is required with respect to this violation.

**ALLEGATION #4: IEP TEAM MEETING TO ADDRESS LACK OF PROGRESS**

11. The educational record received by the XXXX contained IEP progress reports dated December 23, 2015 and April 1, 2016 which state that the student was not making sufficient progress towards achievement of his IEP goals, and that an IEP team meeting should be scheduled to address his lack of progress (Doc. a)
12. There is no documentation that the IEP team convened to address the student's lack of progress while enrolled at the XXX (Review of student's record)

**DISCUSSION/CONCLUSIONS:**

The public agency must ensure that the IEP is reviewed at least annually in order to determine whether the student is making sufficient progress towards achievement of the annual IEP goals. The IEP team must also revise the IEP to address any lack of expected progress toward achieving the goals (34 CFR §300.324).

Based on Findings of Facts #11 and #12, the MSDE finds that the JSES staff did not ensure that the IEP team convened to address the student's lack of progress towards IEP goals. Therefore, this office finds that a violation occurred with respect to this allegation.

**ALLEGATIONS #5 - #8: MAINTAINING THE STUDENT'S RECORD AND PLACEMENT IN COURSES THAT WOULD ENABLE THE STUDENT TO EARN CREDITS TOWARDS A HIGH SCHOOL DIPLOMA**

13. Prior to being placed at the XXX, the DJS placed the student at XXXXXXXXXXXXXXXX, a non-public special education school which shares physical facilities with the XXXXXXXXXXXX, XXXXXXXXXXXX, a DJS facility, in Baltimore County. There is no information or documentation that the DJS informed the BCPS that the student was placed in Baltimore County (Doc. c)
14. The student received instruction and credit for U.S. History and World History as follows:
  - Prior to being placed at XXXXXXXXXXXXXXXX, the student earned .5 credits in US History while enrolled at the XXXXXXXXXXXX, a public school in the AACPS.
  - The student earned .75 credit in the same course while placed in the XXXXXXXXXXXX XXXXXXXXXXXX, a separate non-public special education school by the AACPS.
  - The staff at XXXXXXXXXXXXXXXX erroneously documented on the transcript that was provided to the XXX that the student had earned .5 credits in United States History and .75 credits in World History (Docs. e and f).



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15. The XXX was provided with a transcript that contained the error regarding the student's course work. Upon his enrollment in the education program at the XXX, the XXX staff noticed the error in the transcripts and enrolled the student in World History, where he still required .5 credits (Doc. h).
16. The JSES staff acknowledged that student record forms first prepared for the student upon his exit from the facility on June 6, 2016 and August 23, 2016 were inaccurate and incomplete. The staff revised these forms on November 22, 2016 and November 28, 2016, respectively, to more accurately reflect the student's actual grades and course enrollment (Docs. g and h).

## **LEGAL REQUIREMENTS:**

### **Opportunity to Earn Credits**

The IDEA requires that a Free Appropriate Public Education (FAPE) be provided to students with disabilities through an IEP that meets the needs that result from the disability and enable them to be involved in and make progress in the general curriculum (34 CFR §§300.101, .103, .320, and .323). Therefore, the JSE must ensure that students in each DJS facility have access to instruction to allow them to achieve credit requirements and assessments necessary to progress towards the State standards for graduation from a public high school (COMAR 13A.05.11.03).

To be awarded a Maryland High School Diploma, a student must have earned a minimum of 21 credits, including core credits in English, fine arts, mathematics, physical education, health education, science, social studies, and technology education. Core credits must also be earned in world language or American Sign Language, and in advanced technology education or a career and technology program (COMAR 13A.03.02.03). The term "credit" means the successful demonstration of a specified unit of study (COMAR 13A.03.02.02). Credit instruction must meet the aggregate time requirements specified by each local education agency (COMAR 13A.03.02.04).

### **Students in Out-of-County Living Arrangements**

A child in an out-of-county living arrangement refers to a child who is placed by a State agency, or a court in a county other than where the child's parent or legal guardian resides. A child in an out-of-county living arrangement must be provided with an appropriate education from the local education agency. The local education agency is the local education agency for the county where a child in an out-of-county living arrangement is placed. The financially responsible county is the local education agency in the county where the parent or legal guardian in an out-of-county living arrangement resides (Md. Code Ann., Educ. §4-122).

### **Students in State-Supervised Care**

Prior to, or concurrent with the placement of a student in State-supervised care, the placement agency responsible for a child in State-supervised care must provide notice to a receiving school of

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the enrollment or imminent enrollment of the student. Within two school days after receiving the notice, the receiving school must request the educational record from the sending school (COMAR 13A.08.07.03).

### **Student Record Cards**

The *Maryland Student Records System Manual* requires that when a student transfers to another school, the sending school provide the receiving school with data using a Student Record Card 7 (SR 7). The SR 7 includes information about the courses which the student was enrolled, including course titles for students in secondary school. The sending school must also share with the receiving school information about the credits earned by each student, which may be recorded on the Student Record Card (SR 3) (*Maryland Student Records System Manual*, 2016).

### **DISCUSSION/CONCLUSIONS:**

#### **Allegation #5: Provision of Courses Needed for Graduation**

In this case, the complainant alleges that the student was not provided with the opportunity to take a course in United States History while placed at the XXX. Based on the Findings of Facts #13 - #15, the MSDE finds that the student had already earned the required credit in that course by the time he was placed at the XXX. Therefore, this office finds that no violation occurred.

#### **Allegation #6: Maintenance of the Record at the XXX**

In this case, the complainant alleges that the XX staff did not prepare accurate student record cards (SR7) for the student. Based on the Finding of Fact #16, the MSDE finds that a violation occurred.

Notwithstanding the violation, based on the same Finding of Fact, the MSDE finds that the violation has been remediated. Therefore, no further corrective action is required.

#### **Allegation #7: Maintenance of the Record by the AACPS**

Based on the Findings of Facts #13 and #14, the MSDE finds that the AACPS was the financially responsible county, but not the local education agency responsible for the student's education during the time that he was in XXXXXXXXX<sup>2</sup>. Therefore, no violation is identified with respect to the AACPS.

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<sup>2</sup> During the 2014-2015 school year, the student earned an additional .25 credit more than was necessary in US History. However, this course scheduling and record maintenance issue cannot be addressed through this investigation as it occurred more than one year from the date that his office received the complaint.

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### **Allegation #8: Maintenance of the Record by the BCPS**

Based on the Findings of Facts #13 and #14, the MSDE finds that when the student was placed in Baltimore County, he was a child in State-supervised care who was placed in an out-of-county living arrangement by the DJS, which was the placement agency.

Based on the Findings of Facts #13 - #15, the MSDE finds that the DJS did not inform the BCPS of the student's placement as required. Therefore, this office does not find that a violation occurred with respect to the BCPS.

### **CORRECTIVE ACTIONS/TIMELINES:**

#### **Student-Specific**

The MSDE requires that the JSES provide documentation by July 30, 2017 that the IEP team has determined the compensatory services or other remedy for failure to ensure that the team met to address the lack of student progress, and for the periods where appropriate instruction were not provided to the student. When considering compensatory services, alternative methods to redress the loss of appropriate services may be considered. This includes, but is not limited to, services to bridge the achievement gaps and to build on skills deficits to assist the student in obtaining a Maryland High School Diploma or a Maryland High School Diploma by Examination.

#### **School-Based**

The MSDE requires that the JSES provide documentation by August 30, 2017 of the steps taken to ensure that the CYF school staff comply with the requirements for convening IEP teams to address lack of student progress

The MSDE requires the JSES to provide documentation by that steps have been taken to determine whether the violations identified through this investigation are unique to this case or whether they constitute a pattern of violations at the CYF. Specifically, a review of student records, data, or other relevant information must be conducted in order to determine if the regulatory requirements are being implemented and documentation of the results of this review must be provided to the MSDE. If compliance with the requirements is reported, the MSDE staff will verify compliance with the determinations found in the initial report.

If the regulatory requirements are not being implemented, actions to be taken in order to ensure that the violation does not recur must be identified, and a follow-up report to document correction must be submitted within ninety (90) days of the initial date of a determination of non-compliance. Upon receipt of this report, the MSDE will re-verify the data to ensure continued compliance with the regulatory requirements.

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Documentation of all corrective action taken is to be submitted to this office to: Attention: Chief, Family Support and Dispute Resolution Branch, Division of Special Education/Early Intervention Services, MSDE.

**TECHNICAL ASSISTANCE:**

Technical assistance is available to the parties by contacting Dr. Nancy Birenbaum, Compliance Specialist, Family Support and Dispute Resolution Branch, MSDE at (410) 767-7770.

Please be advised that the JSES and the complainant have the right to submit additional written documentation to this office within fifteen (15) days of the date of this letter if they disagree with the findings of fact 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 school system must implement any corrective actions within the timelines reported in this Letter of Findings.

Questions regarding the findings, conclusions and corrective actions contained in this letter should be addressed to this office in writing. The complainant and the school system maintain the right to request mediation or to file a due process complaint, if they disagree with the identification, evaluation, placement, or provision of a FAPE for the student, including issues subject to this State complaint investigation, consistent with the IDEA. The MSDE recommends that this Letter of Findings be included with any request for mediation or due process.

Sincerely,

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

MEF:gl

c:	S. Dallas Dance	Allison Barmat	Elliott L. Schoen
	Crystal Fleming-Brice	Conya Bailey	Alan Dunklow
	George Arlotto	XXXXXXXXXXXX	Dori Wilson
	Denise Mabry	Dori Wilson	Anita Mandis
	Anna Lisa Nelson	Anita Mandis	Gerald Loiacono
	Dawn Hubbard	Elizabeth Kameen	Nancy Birenbaum