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May 24, 2017

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Assistant Public Defender
Office of the Public Defender
District 01 – Baltimore City
Juvenile Protection Division
201 East Baltimore Street, 8th Floor
Baltimore, Maryland 21202

Ms. S. Beth Hart
Director, Juvenile Services Education
Maryland State Department of Education
200 West Baltimore Street
Baltimore, Maryland 21201

RE: XXXXX
Reference: #17-077

Dear Parties:

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

ALLEGATIONS:

On January 3, 2017, the MSDE received a complaint from Grace Reusing, Esq., Office of the Public Defender, hereafter “the complainant,” on behalf of the above-referenced named student and all other similarly-situated students placed at the XXXXXXXXXXXXXXXXXXXX (XXX), a Maryland State Department of Education Juvenile Services Education (JSE)¹ school. In that correspondence, the complainant alleged that the JSE violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to the above-referenced students.

¹ Formerly known as the MSDE, Juvenile Services Program (JSEP) and also known as the Juvenile Services Education (JSE).

The MSDE identified the allegations listed below for investigation.

1. The JSE did not ensure that the student was provided with special education instruction in the educational placement required by the Individualized Education Program (IEP), while he was placed by the Maryland Department of Juvenile Services (DJS) at the XXXXXXXXXXXXXXXX (XXX), from March 2016 to June 2016, in accordance with 34 CFR §§300.101 and .323.
2. The JSE did not ensure that the student was provided with the behavior support services required by the IEP, while he was placed by the DJS at the XXX, from March 2016 to June 2016, in accordance with 34 CFR §§300.101 and .323.
3. The JSE 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 March 2016 to June 2016, in accordance with 34 CFR §§300.101, .149, and COMAR 13A.03.02 and 13A.05.11.
4. The JSE did not ensure that the student's educational record was maintained while he was placed by the DJS at the XXX from March 2016 to June 2016, in accordance with COMAR 13A.05.11 and 13A.08.02.
5. The JSE did not provide prior written notice of the team's decisions made during the IEP team meeting on May 11, 2016, in accordance with 34 CFR §300.503.
6. The JSE did not ensure that the revisions made to the IEP on May 11, 2016, while the student was placed by the DJS at XXX, were based on the student's needs, in accordance with 34 CFR §300.324.
7. The JSE 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 XX, from March 2016 to June 2016, in accordance with 34 CFR §§300.18, .101, .156, .323, and COMAR 13A.05.11.07 and 13A.12.01.01.

INVESTIGATIVE PROCEDURES:

1. On January 3, 2017, the MSDE received the State complaint and documentation to be considered.
2. On January 13, 2017, the MSDE sent correspondence to the complainant that acknowledged receipt of the complaint and identified the allegations subject to this investigation. The MSDE also notified the JDE of the allegations to be investigated and requested that the JSE review the alleged violations.

3. On January 16, 2017, the MSDE requested documents from the JSE.
4. On January 17, 2017, the JSE provided the MSDE with documentation.
5. On January 21, 2017, Mr. Albert Chichester, Education Program Specialist, MSDE, conducted a telephone interview with the complainant about the allegations being investigated.
6. On February 2 and 23, 2017, Mr. Chichester and Ms. Anita Mandis, Section Chief, Complaint Investigation Section, MSDE, met with Ms. S. Beth Hart, Director, JSE, MSDE, and Ms. Dawn Hubbard, Compliance Specialist, JSE, MSDE, to discuss the allegations.
7. On May 15 and 17, 2017, Mr. Chichester again met with Ms. Hubbard and requested that JSE provide additional documentation.
8. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
 - a. IEP, dated March 24, 2015 and revised on October 22, 2015;
 - b. IEP, dated May 11, 2016;
 - c. IEP meeting summary, dated May 11, 2016;
 - d. IEP Sign-In sheet, dated May 11, 2016;
 - e. The Provision of Special Education Services letter, dated March 14, 2016;
 - f. IEP Initiation of Services form, dated March 14, 2016, signed by XXX staff;
 - g. Course/credit confirmation letter from XXX, dated February 15, 2017;
 - h. The student's transcripts from XXXXXXXXXXXXXXXXXXXXXXXXXXXX;²
 - i. The Student Record Card (SR 7), dated March 8, 2016;
 - j. The Student Record Card (SR 7), dated May 2, 2016;
 - k. The Student Record Card (SR 3), for the 2015-2016 school year;
 - l. Communication logs, dated between March 2, 2016 and July 25, 2016;
 - m. IEP goal progress reports, dated May 5, 2016 and June 28, 2016;
 - n. JSE record request to XXXXXXXXXXXXXXXXXXXXXXXXXXXX, dated March 2, 2016;
 - o. JSE record request to XXXXXXXXXXXXXXXXXXXXXXXXXXXX, dated March 7, 2016;
 - p. Related Service Logs, kept by the school psychologist, dated between March 22, 2016 and June 23, 2016;
 - q. The JSE teacher master schedule for the 2015 - 2016 school year;
 - r. The *JSE Special Education Policy and Procedures* in effect since August 10, 2014;
 - s. *JSE Fourth Quarter Report and 2016 Annual Review of Facilities*; and

² XXXXXXXXXXXXXXXXXXXX, has since been renamed as XXXXXXXXXXXXXXXXXXXX
(<http://XXXXXXXXXXXX/>)

- t. Correspondence from the complainant containing allegations of violations of the IDEA, received by the MSDE on January 3, 2017.

BACKGROUND:

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

The student was placed by the Maryland Department of Juvenile Services (DJS) at the XXXXXXXXXXXXXXXXXXXX (XXX) from February 26, 2016 to June 28, 2016. Prior to that period, the student was placed by the XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX (XXXX) at XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX. in Prince George's County, Maryland, a nonpublic, separate, special education school (Review of the JSE record).

The student is currently placed in a federal adult correctional facility in XXXXXXXXXXXXXx (<https://www.bop.gov/inmateloc/>).

During the time period covered by this investigation, the student's parent participated in the education decision-making process and was provided with written notice of the procedural safeguards (Docs. a - d).

ALLEGATION #1: THE PROVISION OF SPECIAL EDUCATION IN THE PLACEMENT REQUIRED BY THE IEP

FINDINGS OF FACTS:

1. The IEP, which was provided to XXX by XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX (XXXX IEP), requires that the student be provided with twenty-seven and one half (27.5) hours of special education instruction, in a separate special education classroom, each week. The IEP also reflects that the student be provided with a "low student-to-teacher ratio, modified curriculum, blended learning, and behavioral supports outside the general education classroom" (Docs. a, l, n, and o).
2. The student was placed in a general education classroom at XXX, which provided the student with a low student-to-teacher ratio, a high level classroom structure, behavioral supports, and a general and special education teachers. However, there is no documentation that an IEP team determined that the student was receiving the same services in the general education classroom environment at XXX as he received prior to his placement at XXX (Docs. e, f, and an interview with the JSE staff).
3. On May 11, 2016, the IEP team at XXX reviewed the student's file, the delivery of special education services, teacher observations, progress reports and work samples, and determined that the student was, in fact, receiving the same services in the general education classroom environment at XXX as he received prior to his placement at XXX. The IEP team also determined that the classroom at XXX provided the student with a

“low student-to-teacher ratio, a modified curriculum, and behavioral supports through counseling outside the general education classroom” (Docs. b - d).

4. On February 16, 2017, the JSE completed a training for the school staff to ensure that educational placements are consistent with the requirements of the IEP (A review of the JSE staff training agenda).

DISCUSSION/CONCLUSIONS:

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 student was not provided with special education instruction, in a separate special education classroom, as required by the IEP (Doc. t)

Based on the Finding of Facts #1 and #2, the MSDE finds that the student was not placed in a separate special education classroom, as required by the IEP. Therefore, this office finds that a violation occurred with respect to the allegation.

Notwithstanding the violation, based on the Finding of Fact #3, the MSDE finds that the IEP team determined that the student’s placement in the general education classroom at the XXX was comparable to that of a separate special education classroom in community. Further, based on the Finding of Fact #4, the MSDE finds the JSE has completed training to ensure that a similar violation does not recur. Therefore, no further corrective action is required.

ALLEGATION #2: THE PROVISION OF BEHAVIORAL SUPPORTS REQUIRED BY THE IEP

FINDINGS OF FACTS:

5. The XXXX IEP in effect in March 2016, requires that the student be provided with “behavior supports” as a related service, one (1) hour each week, outside the general education classroom (Doc. a).
6. The JSE acknowledges that the student was not consistently provided with behavior supports outside the general education classroom, as required by the IEP, while he was placed in the XXX, from March 2016 to June 2016 (Doc. d and an interview with the JSE staff).
7. In April 2017, the JSE completed a review of the educational records for other students at the XXX that required the provision of related services. Based on that review, there is documentation that the JSE has identified those other students that did not receive related services, as required by their IEP, and have begun the process of notifying those students and families, to offer compensatory services for the lack of the provision of related services (A review of the JSE staff training agenda).

DISCUSSION/CONCLUSIONS:

The public agency must ensure that each student is provided with the special education and related services required by the IEP (34 CFR §§300.101 and .323).

Individuals in the federal correctional system fall under the jurisdiction of the Federal Bureau of Prisons (BOP) within the Department of Justice. The IDEA makes no specific provision for funding educational services for individuals with disabilities through the BOP (*Letter to Yudien, Office of Special Education Programs (OSEP)*, August 19, 2003).

Based on the Findings of Facts #4 - #5, the MSDE finds that the student was not provided with the amount of behavior supports, outside the general education classroom, as required by the IEP. Therefore, this office finds that a violation has occurred with respect to the allegation.

Notwithstanding the violation, the MSDE finds that the student is no longer entitled to the provision of special education and related services and is not available for the provision of such services to remediate the violation.

In addition, based on the Finding of Fact #7, the MSDE finds that JSE has taken steps to remediate the violation for similarly-situation students at XXX. Therefore, no further corrective action is required to remediate the violation.

ALLEGATIONS #3 AND #4: COURSE ENROLLMENT FOR ACHIEVING CREDIT REQUIREMENTS NECESSARY TO PROGRESS TOWARDS THE STANDARDS OF GRADUATION AND MAINTAINING THE EDUCATIONAL RECORD

FINDINGS OF FACTS:

8. 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).
9. The student's SR 3 card reflects that he was enrolled in a biology course at his previous placement for three (3) quarters, but did not receive a passing grade for each of the three (3) quarters, and did not complete the course for credit prior to arriving at the XXX (Docs. h and k).
10. When the student arrived at the XXX, rather than being placed into a biology course for a fourth (4) quarter, he was incorrectly placed into a chemistry course, due to an administrative error. The JSE staff report that the student would not have been able to successfully earn a credit for the course because he did not receive a passing grade during

each of the three (3) quarters at his previous placement (Docs. h, t, and an interview with JSE staff).

11. The student's SR 3 card reflects that he was enrolled in an algebra I course and a English 9 course during his previous placement. When the student arrived at the XXX, he was placed into an algebra I course and an English 9 course, and successfully completed the courses. However, the JSE staff acknowledges that they failed to complete an SR 3 card issuing the student credit for the completion of algebra I and English 9 courses. On February 15, 2017, an SR 3 card was corrected and the student was issued credit for the completion of these courses while at the XXX (Docs. g, k, t, and an interview with the JSE staff).
12. The JSE acknowledges that the student's SR 7 card reflected an inaccurate entry date of May 5, 2016. The JSE has since corrected the student's SR 7 card to reflect an accurate entry date of March 8, 2016. The JSE staff reported that, the student was released on April 18, 2016 and re-admitted on April 20, 2016, and that the date of May 5, 2016 was incorrectly documented due to a "clerical error" when completing the SR 7 card (Docs. i, j, and l).
13. On April 13, 2017, the JSE completed a training for the JSE school staff to ensure that proper procedures are followed when enrolling a student in a course in order for them to achieve credit requirements necessary to progress towards the standards of graduation. In addition, the documentation reflects that the JSE also completed training to ensure the school staff follow proper procedures when maintaining the education record for students placed at XXX from other educational facilities (A review of the JSE staff training agenda).

DISCUSSION/CONCLUSIONS:

Allegation #3 Course Enrollment for Achieving Credit Requirements Necessary to Progress Towards the Standards of Graduation

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).

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 school system (COMAR 13A.03.02.04).

In this case, the complainant alleges that the JSE staff did not ensure that the student was placed in an appropriate class when he transferred from XXXXXXXXXXXXXXXXXXXXXXXXXXXX. The complainant further alleges that the student's educational record was not accurately maintained and that credits were not issued upon his completion of the algebra I and English 9 courses (Doc. t).

Based on the Findings of Facts #8 - #10, the MSDE finds that the JSE did not ensure that the student was placed in a biology course, which was required, when he transferred from XXXXXXXXXXXXXXXXXXXXXXXX. Therefore, this office finds that a violation occurred with respect to the allegation.

Notwithstanding the violation, based on the Finding of Fact #10, the MSDE finds that, although the student was not placed in the appropriate class, the student would not have been able to earn a credit for the class. Further, based on the Finding of Fact #13, the MSDE finds the JSE has completed training to ensure that a similar violation does not recur. Therefore, no further corrective action is required.

Based on the Findings of Facts #8 and #11, the MSDE finds that JSE failed to issue the student credits for the completion of his algebra I and English 9 courses. Therefore, this office finds that a violation occurred with respect to the allegation.

Notwithstanding the violation, based on the Finding of Fact #11, the JSE corrected the educational record, and provided the student with the appropriate credits for the completion of algebra I and English 9, while placed at the XXX. Further, based on the Finding of Fact #13, the MSDE finds the JSE has completed training to ensure that a similar violation does not recur. Therefore, no further corrective action is required.

Allegation #4 Maintaining the Educational Record

When a student transfers to a new school, the sending school must share with the receiving school information, including the courses which the student was enrolled. When a student transfers to a State agency or Correctional Education facility, original student records must be sent in their entirety within three (3) school days of the receipt of the request (COMAR 13A.08.07.03 and *Maryland Student Records System Manual*, 2011, 2016).

Student records provide information about a student's academic performance; thus, the proper maintenance of these records is necessary to ensure that accurate information is available to plan for a student's education. All student educational records are to be maintained in accordance with the Family Educational Rights and Privacy Act (FERPA) (34 CFR §§300.610 - .627).

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 3 (SR 3) (*Maryland Student Records System Manual* 2016).

In this case, the complainant alleges that the student's SR 7 card reflected inaccurate entry dates for the time which the student was placed at XXX (Doc. t).

Based on the Findings of Fact #12, the MSDE finds that the JSE documented inaccurate entry dates for the time which the student was placed at XXX. Therefore, this office finds that a violation has occurred with respect to the allegation.

Notwithstanding the violation, based on the Finding of Fact #12, the MSDE finds that JSE corrected the student's SR 7 card to reflect accurate entry dates for the time which the student was placed at the XXX. Further, based on the Finding of Fact #13, the MSDE finds the JSE has completed training to ensure that similar violations do not recur. Therefore, no further corrective action is required.

ALLEGATION #5: THE PROVISION OF PRIOR WRITTEN NOTICE

FINDINGS OF FACTS:

14. There is documentation that a prior written notice for the IEP team meeting held on May 11, 2016 was prepared. However, there is no documentation that it was provided to the parent (Doc. t).
15. On February 16, 2017, the JSE completed a training for staff to ensure that proper procedures are followed for the provision of prior written notice after an IEP team meeting (A review of the JSE training agenda).

DISCUSSION/CONCLUSIONS:

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 Free Appropriate Public Education (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.

Based on the Finding of Fact #14, the MSDE finds that there is no documentation that the prior written notice document for the meeting held on May 11, 2016 was provided to the parent. Therefore, this office finds that a violation has occurred with respect to the allegation.

Notwithstanding the violation, based on the Finding of Fact #15, the MSDE finds that JSE has completed training to ensure that similar violations do not recur. Therefore, no further corrective action is required.

ALLEGATION #6: REVISING THE IEP BASED ON THE STUDENT'S NEEDS

FINDINGS OF FACTS:

16. The IEP required that the student be provided with twenty-seven and one half (27.5)

hours each week of special education instruction, in a separate special education classroom, and one (1) hour of behavioral supports each week, outside the general education classroom (Doc. a).

17. On May 11, 2016 the XXX IEP team reviewed and revised the student's IEP to require twenty-four hours (24) and ten (10) minutes of special education instruction, each week, in a separate special education classroom, and one (1) hour of behavioral supports each week, outside the general education classroom. However, there is no documentation that the basis for the team's decision to reduce the student's special education instructional hours was based on the individual needs of the student (Docs. b, c, and t).
18. There is documentation to support that the student was making sufficient progress to meet the annual goals and progressed through the general curriculum while he was placed at the XXX (Doc. m).
19. On February 16, 2017, the JSE completed a training to ensure that the school staff follow proper procedure with regard to consideration of the student's needs when determining the provision of educational services student (A review of the JSE training agenda).

DISCUSSION/CONCLUSIONS:

In developing each student's IEP, the IEP team must consider the strengths of the student, the concerns of the parents for enhancing the education of their student the results of the initial or most recent evaluation of the student; and the academic, developmental, and functional needs of the student (34 CFR §300.324).

In this case, the complainant alleges that the special education instructional hours were reduced without considering the individual needs of the student (Doc. t).

Based on the Findings of Facts #16 and #17, the MSDE finds that there is no documentation that the IEP team's decision to decrease special education instructional hours was based on the student's needs. Therefore, this office finds that a violation occurred with respect to the allegation.

Notwithstanding the violation, based on the Finding of Fact #18, the MSDE finds that there is evidence that the violation did not prevented the student from benefiting from the program. Further, based on the Finding of Fact #19, the MSDE finds that JSE has completed training to ensure that similar violations do not recur. Therefore, no further corrective action is required.

ALLEGATION #7: THE PROVISION OF SPECIAL EDUCATION INSTRUCTION BY A SPECIAL EDUCATION TEACHER

FINDINGS OF FACTS:

20. 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, with the exception of the social studies teacher (Doc. q and a review of the JSE certification records).

21. The JSE acknowledges that the XXX did not request to have the support for non-certified teachers until October 2016 (Doc. l and an interview with the JSE staff).
22. There is documentation that efforts are being made by JSE to recruit and retain qualified teachers for the facilities and that non-certified teachers are now being supervised by certified staff while vacancies are being filled (Doc. s)

DISCUSSION/CONCLUSIONS:

The IDEA requires that each State Education Agency (SEA) establish and maintain qualifications to ensure that personnel necessary to carry out the purposes of the regulations 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 JSE is required to ensure that instruction is provided by personnel with valid Maryland Educator Certificates so that 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 *JSE 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” (Doc. r).

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

Based on the Finding of Fact #20, the MSDE finds that the JSE has not ensured that the teachers have been certified in the areas which they provided instruction. Based on the Findings of Facts #20 and #21, the MSDE further finds that the JSE did not ensure that non-certified general education teachers were supervised by teachers holding certification prior to October 2016. Therefore, this office finds that a violation occurred with respect to the allegation.

Notwithstanding the violations identified, based on the Finding of Fact #16, the MSDE finds no impact on the student’s ability to benefit from the program. Based on the Finding of Fact #22, the MSDE finds there are procedures in place for ensuring supervision of non-certified teachers. Therefore, no further correction action is required.

Grace Reusing, Esq.
Ms. S. Beth Hart
May 24, 2017
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TIMELINE:

Please be advised that both the complainant and the JSE have the right to submit additional written documentation to this office, which must be received within fifteen (15) days of the date of this letter, if they disagree with the findings of facts or conclusions reached in this Letter of Findings. The additional written documentation must not have been provided or otherwise available to this office during the complaint investigation and must be related to the issues identified and addressed in the Letter of Findings.

If additional information is provided, it will be reviewed and the MSDE will determine if a reconsideration of the conclusions is necessary. 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.

Questions regarding the findings and conclusions contained in this letter should be addressed to this office in writing. The parties maintain the right to request mediation or to file a due process complaint, if they disagree with the identification, evaluation, placement, or provision of a FAPE for the student, including issues subject to this State complaint investigation, consistent with the IDEA.

The MSDE recommends that this Letter of Findings be included with any request for mediation or a due process complaint.

Sincerely,

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

MEF:ac

c: Deborah Grinnage-Pulley
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