



200 West Baltimore Street • Baltimore, MD 21201 • 410-767-0100 • 410-333-6442 TTY/TDD • msde.maryland.gov

January 18, 2018

Grace Reusing, Esq.
Assistant Public Defender
Office of the Public Defender
Juvenile Protection Division
217 East Redwood Street, Suite 1000
Baltimore, Maryland 21202

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: #18-047

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 December 5, 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 with respect to the time period that the student was placed by the Maryland Department of Juvenile Services (DJS) at the XXXXXXXXXXXXXXXX XXXX (XXX) from December 5, 2016¹ to March 17, 2017:

¹ While the complainant alleged that the violation occurred since November 30, 2016, she was informed, in writing, that only those violations that occurred within one (1) year can be addressed through the State complaint investigation procedure (34 CFR §300.153).

1. The JSES did not ensure that the student was provided with special education services as required by the Individualized Education Program (IEP), in accordance with 34 CFR §§300.2, .101, .149, and .323. Specifically:
 - a. The student was not provided with special education instruction in a separate special education classroom by a special education teacher; and
 - b. The student was not provided with the services of a dedicated adult assistant.
2. The JSES did not ensure that the IEP team reviewed and revised, as appropriate, the IEP to address lack of expected progress towards achievement of the annual goals, in accordance with 34 CFR §300.324.
3. The student was not provided with the opportunity to continue to earn credit and progress through the general curriculum in music and physical education, in accordance with 34 CFR §§300.2, .101, .149, and COMAR 13A.03.02.03 and 13A.05.11.03.

The MSDE investigated the following allegations with respect to the time period that the student was placed by the DJS at the XXXXXXXXXXXXXXXX (XXX) from March 28, 2017 to October 18, 2017:

4. The JSES did not ensure that the student was provided with special education services as required by the IEP, in accordance with 34 CFR §§300.2, .101, .149, and .323. Specifically:
 - a. The student was not provided with the required amount of special education instruction;
 - b. The special education instruction that was provided was not delivered by a special education teacher in a separate special education classroom; and
 - c. The student was not provided with the services of a dedicated adult assistant.
5. The JSES did not ensure that the IEP team considered positive behavioral interventions to address the student's interfering behavior and reviewed and revised the IEP, as appropriate, to address lack of expected progress towards achievement of the annual goals, in accordance with 34 CFR §300.324.
6. The JSES did not ensure that revisions made to the IEP on June 12, 2017 were based on data regarding the student's needs, in accordance with 34 CFR §§300.101, .320, and .324.

7. The JSES did not ensure that assessments determined necessary by the IEP team on June 12, 2017 were conducted and the results considered by the IEP team in reviewing and revising the IEP, in accordance with COMAR 13A.05.01.06.
8. The student was not provided with the opportunity to continue to earn credit and progress through the general curriculum in science and social studies during the summer session from July 5, 2017 to September 5, 2017, and in science at the start of the 2017-2018 school year, in accordance with 34 CFR §§300.2, .101, .149, and COMAR 13A.03.02.03 and 13A.05.11.03.

BACKGROUND:

The student is sixteen (16) years old, is identified as a student with Multiple Disabilities under the IDEA, including an Emotional Disability and an Other Health Impairment related to difficulty with attention. He has an IEP that requires the provision of special education instruction and related services.

The student has had the following placements:

- From November 26, 2016 to March 27, 2017, the DJS placed the student at the CYF.
- From March 27, 2017 to October 18, 2017, the DJS placed the student at the XXX.
- From October 18, 2017 to December 16, 2017, the DJS placed the student at the CYF.
- On December 16, 2017, the DJS transferred the student back to the District of Columbia through the Interstate Compact for Juveniles.

FINDINGS OF FACTS:

1. When the student was placed at the XXX he had an IEP that was developed in the District of Columbia (DC IEP) that included goals for the student to improve math, reading, writing, and coping skills by October 5, 2017.
2. The DC IEP required the provision of twenty-nine (29) hours per week of special education instruction and 4 hours per month of behavioral support services outside of the general education classroom. It also required the provision of a “dedicated aide” for thirty (30) hours per week. The IEP does not identify the type of provider of the special education instruction.
3. On December 1, 2016, the XXX staff obtained the DC IEP. However, the XXX staff did not attempt to clarify with the District of Columbia the provider required for special education instruction.

4. There is documentation that, while attending school in the District of Columbia, the student was receiving instruction in English 9, algebra I, environmental science, world history, geography, physical education, music, introduction to automobile technology, and small engine repair classes.
5. The JSES placed the student in English 9, algebra I, environmental science, and world history, where he could continue to work to earn credits in those courses. The JSES also placed the student in two (2) career technology education courses for which he had not already earned credit.
6. The student was not provided with the services of a dedicated aide at the XXX.
7. The progress reports and report card made for the student at the XXX reflect that the teachers making the reports were teachers who were assigned to provide instruction in the general education classroom and not the teachers assigned to provide instruction outside of the general education classroom. They reflect that the student was not passing English 9 or world history for the semester ending on February 1, 2017, and that he was demonstrating interfering behavior. However, the IEP team did not convene to address the interfering behavior.
8. The XXX class schedule reflects that two (2) teachers assigned to provide instruction outside of the general education classroom were assigned to provide instruction at the same time to any students assigned to the Intensive Services Unit (ISU).² This schedule was revised during the “summer session” with the JSES hiring substitute teachers to work at the school through additional funding provided by the MSDE, DSE/EIS.
9. On March 28, 2017, the student was placed by the DJS at the XXX and he was enrolled in the same courses that he was taking at the XXX
10. The student was not provided with the services of a dedicated aide at the XXX.
11. There is documentation that the student was assigned to the separate special education classroom at the XXX. A log of students provided with instruction in a separate special education classroom contains sporadic notations of the class periods during which instruction was provided in that setting. However, it does not reflect that the student was provided with instruction in that setting for each required class period. In addition, the teachers who were assigned to provide special education instruction to the student were general education teachers, and the school schedule does not have sufficient staffing for a

² The ISU is a dedicated cottage that is a separate living unit where more a more intensive level of care is provided to those youth displaying special mental health and significant behavioral problems. It is designed to provide short-term intensive interventions to assist the youth in being able to successfully return to the general population.

general education teacher to provide services outside of the general education classroom for all of the periods during which the student is required to receive special education instruction in that setting and simultaneously provide instruction in the general education setting. In addition, there is no documentation that there has been sufficient staffing for teachers to provide instruction outside of the general education classroom and ISU² when needed. Efforts were made to recruit substitute teachers at the XXX, but they were unsuccessful.

12. The DC IEP did not indicate the frequency with which the student's progress towards achievement of the annual IEP goals was to be reported. On April 12, 2017, the XXX staff developed a report of the student's progress, which reflects only the progress made since his placement at the XXX in March 2017. Those reports state that the student had not been placed at the XXX long enough to measure the student's progress on the goals. Therefore, there are no reports made of the student's progress on the IEP goals for the time period that he was placed at the XXX.
13. On June 8, 2017, the complainant asked the JSES if it planned to continue to provide instruction in credit bearing courses for the remainder of the school year. The JSES responded that it was offering only credit recovery and humanities and STEM³ enrichment courses during its "summer session" from July 5, 2017 through August 29, 2017.
14. On June 12, 2017, the IEP team convened. The IEP goals in math at that time were designed to improve the student's understanding of addition and subtraction of rational numbers and the use of decimals, and he was assigned to an algebra I class. However, the IEP team documented the following, based on a January 25, 2017 review of student's records:

[The student] can plot points on a coordinate plane. [He] can identify two dimensional shapes, explain the characteristics of the shapes and categorize the shapes as part of a hierarchy. [He] is able to justify his answers using math vocabulary. Overall, [the student] is proficient in 8th grade math and able to advance to algebra I.
15. Notwithstanding this information, the math goals were continued without explanation even though they had not been achieved, and revised to require the student to solve math problems from early 3rd grade to mid 4th grade levels.

³ STEM refers to science, technology, engineering, and math (www.ed.gov).

16. The school staff also reported the following:

[The student] did not complete any given assignment. His behavior impacts his learning. His teachers said that [he] has the ability of receiving and completing grade level assignments but his behaviors need to be controlled. He is capable of receiving instruction in the general education setting. However, services should be implemented as it is in the current and active IEP.

17. With respect to the student's written language skills, the school staff reported that the student "can clearly articulate his thoughts and has a good command of writing mechanics." However, the team continued the annual goals for the student to improve these skills without explanation.
18. With respect to the student's present levels of performance in reading, the IEP team documented that "it is difficult to measure his academic abilities due to his disruptive behavior." The annual goals to improve behavior were continued. The IEP was revised to require the provision of encouragement and reinforcement of appropriate behavior, and continued to require the provision of a dedicated aide.
19. While the school staff reported that updated psychological and educational assessments were required, the IEP team did not consider this information.
20. While the IEP team decided that the student required all special education instruction in a separate special education classroom, the IEP was revised to reflect that the primary provider of supplementary aids and services will be the general education teacher. However, the school schedule does not include sufficient staffing for a general education teacher to provide services outside of the general education classroom for all of the periods during which the student is required to receive special education instruction in that setting.
21. At the time of the June 12, 2017 IEP team meeting, reports of the student's progress towards achievement of the annual IEP goals stated the following:

The IEP goal has not been introduced. [The student] has not been in school for instruction. He was in a separate program for the most part.⁴

22. On June 26, 2017, the complainant requested that the school system continue to provide instruction in credit bearing courses during the "summer session" in order to ensure the provision of a comprehensive program for the required 220 school days per year, and the JSES agreed to do so.

⁴ The documentation reflects that the student was assigned to the Intensive Services Unit (ISU) for several days during the reporting period.

23. On June 29, 2017, the JSES informed its school principals that instruction was to be provided to enable credit completion in courses in which students are passing as well as credit recovery during the “summer session.” The principals were directed not to enroll students in courses for original credits during the summer session since they would not have enough time to begin a new course, complete all course content, and demonstrate mastery of the material during that time period. Students who were not eligible for course completion or course recovery were to be provided with enrichment activities to ensure the provision of six (6) hours of instruction per day. Non-credit bearing courses in which instruction is provided were not to be reported on “summer session” progress reports, but were to be reported on the Student Record Card 7 (SR 7).
24. Prior to July 5, 2017, the student was passing English 9, algebra I, and environmental science. He was failing world history and the career technology education classes.
25. From July 5, 2017 through August 29, 2017, the JSES continued to provide a six (6) hour school day. The student continued to receive instruction in English 9 and algebra I. The student did not continue to receive instruction in environmental science. Instead, the student was provided with continued instruction in the two (2) career technology education classes during the “summer session.” The “summer session” progress report reflects that the providers of special education in English and math were changed from general education to special education teachers during the “summer session.”
26. Science instruction was not provided at the XXX because the science teacher, who did not hold certification in math, was assigned to provide instruction in math as a result of a math teacher vacancy.
27. There is documentation that the JSES began recruitment for the vacant math teacher position at the XXX without delay, and that this position was filled on October 25, 2017. There is documentation that the JSES has also hired a human resource staff member and that ongoing recruitment efforts are made to fill vacant positions at the JSES schools.
28. On August 29, 2017, a report on the student’s progress towards achievement of the annual IEP goals was issued, stating that the student “made minimal progress” due to interfering behavior.
29. From the start of the 2017-2018 school year until October 18, 2017, the student was again placed in English 9, as a result of a documentation error, despite the fact that he completed the course during the “summer session” and earned a credit for the course. He was also placed in two (2) career technology education credit bearing courses, and a geometry course. The JSES staff report that they are exploring the possibility of issuing an elective course credit for the student’s work in English 9 after he completed the course.

30. A review of the student's work samples in math reflects that he completed work in algebra I during the "summer session" and in geometry at the start of the 2017-2018 school year. No work samples were available for review for the time period prior to the "summer session."
31. On October 12, 2017, the IEP team convened to address the lack of expected progress towards achievement of the behavioral goal. At that time, the student was reported to be making sufficient progress towards achievement on all but the behavioral goal. The team considered teacher reports that the student was refusing to accept counseling services and special education instruction in a separate special education classroom. The IEP team decided that, based on the fact that the student was also receiving counseling from the DJS, additional counseling services would be provided through the education program only at the student's request. However, the team decided that the student's behavior could not be supported in the general education classroom. The team discussed that the student is on a behavior contract and will be rewarded for compliant behavior.
32. On January 17, 2018, the MSDE issued a Letter of Findings reporting the results of an investigation of the allegation that the JSES did not ensure that students were provided with the opportunity to earn credit and progress through the general curriculum during the "summer session." As a result of that investigation, this office found that, while the JSES offered credit bearing courses for the required 220 school days per year, it did not ensure that decisions made about the courses to be offered were consistently based on student needs and the guidance it had provided to its schools. The MSDE further found that the JSES had identified students who may have been impacted by the violation and was taking corrective action. This office required system-based corrective action to ensure that the violation does not recur, to be completed by May 1, 2018 (State complaint #18-045).

DISCUSSION/CONCLUSIONS:

Allegation #1 IEP Implementation at the XXX

Based on the Findings of Facts #2, #7, and #8, the MSDE finds that there is no documentation that the student was consistently provided with special education instruction outside of the general education classroom, and that there was insufficient staffing to ensure the consistent provision of such services, in accordance with 34 CFR §§300.2, .101, .149, and .323.

Based on the Findings of Facts #8, #12, #14, and #30, the MSDE further finds that, while the JSES took appropriate steps to address its insufficient staffing, there is no documentation that the annual IEP goals were addressed through the provision of special education instruction while the student was placed at the XXX, in accordance with 34 CFR §§300.2, .101, .149, and .323.

Based on the Findings of Facts #2 and #6, the MSDE finds that the student was not provided with the services of a dedicated aide as required by the IEP, in accordance with 34 CFR §§300.2, .101, .149, and .323. Therefore, this office finds violations with respect to the allegation.

Allegation #2 Review and Revision of the IEP to Address Lack of Expected Progress on the Annual IEP Goals at the XXX

Based on the Finding of Fact #12, the MSDE finds that there is no documentation that the student was making insufficient progress toward achievement of the annual IEP goals and that the IEP team was required to convene to address the lack of expected progress while he was placed at the XXX. Therefore, no violation is found with respect to the allegation.

However, based on the Finding of Fact #7, the MSDE finds that the student was demonstrating interfering behaviors at the XXX and that the IEP team did not convene to address those behaviors, in accordance with in accordance with 34 CFR §300.324. Therefore, this office finds that a violation occurred.

Allegation #3 Opportunity to Progress through the General Curriculum at the XXX

Based on the Findings of Facts #1, #4, and #5, the MSDE finds that the student was able to continue to take core courses that he had been taking in the community when he was placed at the XXX. Based on those Findings of Facts, the MSDE further finds that, while the student was not continued in the same elective courses when he was placed at the XXX, he was placed in credit bearing elective courses that were required for him to make progress in the general curriculum, in accordance with 34 CFR §§300.2, .101, .149, and COMAR 13A.03.02.03 and 13A.05.11.03. Therefore, this office does not find that a violation occurred with respect to the allegation.

Allegation #4 IEP Implementation at the XXX

Based on the Findings of Facts #1 and #2, the MSDE finds that the IEP did not require the provision of special education instruction by a special education teacher, and therefore, does not find a violation with respect to this aspect of the allegation.

However, based on the Findings of Facts #2 and #3, the MSDE finds that the JSES did not obtain clarification from the District of Columbia about the required service provider when the student was placed at the XXX or from the XXX when the student was placed at the XXX in order to ensure that the IEP was implemented as intended, in accordance with 34 CFR §§300.2, .101, .149, and .323.

Based on the Findings of Facts #2, #11, #20, and #25 - #27, the MSDE finds that while the JSES took appropriate steps to fill vacancies at the XXX, there is no documentation that the student was consistently provided with special education instruction in core courses outside of

the general education classroom or that there is sufficient staffing to do so, in accordance with 34 CFR §§300.2, .101, .149, and .323.

Based on the Findings of Facts #1, #2, #5, #9, #14, #21, and #31, the MSDE further finds that while there is documentation that the student was provided with special education instruction at the XXX, there is no documentation that the annual IEP goals were consistently addressed, in accordance with 34 CFR §§300.2, .101, .149, and .323.

In addition, based on the Findings of Facts #2 and #10, the MSDE finds that the JSES did not ensure that the student was provided with the services of a dedicated aide, as required by the IEP, in accordance with 34 CFR §§300.2, .101, .149, and .323. Therefore, this office finds that violations occurred.

Allegation #5 Review and Revision of the IEP to Address Lack of Expected Progress on the Annual IEP Goals at the XXX

Based on the Findings of Facts #12, #18, and #21, the MSDE finds that there were no reports that the student was making insufficient progress towards achievement of the annual IEP goals at the XXX until June 2017. Based on those Findings of Facts, the MSDE finds that at that time, the IEP team revised the IEP to address lack of expected progress with the addition of a positive behavioral intervention, in accordance with 34 CFR §300.324. Based on the Findings of Facts #28 and #31, the MSDE finds that the IEP team again convened in October 2017 to address continued lack of expected progress towards achievement of the behavioral goal. Therefore, this office does not find that a violation occurred with respect to the allegation.

However, based on the Findings of Facts #7, #16, and #18, the MSDE finds that the JSES did not ensure that the IEP team at the XXX convened to address the interfering behaviors exhibited by the student since February 2017 at the XXX until June 12, 2017, in accordance with in accordance with 34 CFR §300.324. Therefore, this office finds that the violation related to addressing the student's interfering behaviors that began at the XXX continued at the XXX from March 28, 2017 to June 12, 2017.

Allegation #6 Decisions Made by the IEP Team on June 12, 2017 at the XXX

Based on the Findings of Facts #14, #15, and #17, the MSDE finds that there is no data to support the decisions made by the IEP team on June 12, 2017, in accordance with 34 CFR §300.324. Therefore, this office finds that a violation occurred with respect to the development of the annual IEP goals on June 1, 2017.

Based on the Findings of Facts #2, #16 and #20, the MSDE further finds that the JSES did not ensure that the IEP revised on June 12, 2017 is written clearly with respect to the placement in which special education services are to be provided.

Allegation #7 Conducting Assessments at the XXX

Based on the Finding of Fact #19, the MSDE finds that the IEP team did not recommend that additional testing be conducted. Therefore, this office does not find that a violation occurred with respect to the allegation.

However, based on that Finding of Fact, the MSDE finds that the IEP team did not consider information from the school staff that updated assessments are required in accordance with 34 CFR §300.324. Therefore, this office finds that a violation occurred with respect to the review and revision of the IEP on June 12, 2017.

**Allegation #8 Opportunity to Progress Through the General Curriculum
at the XXX During the “Summer Session”**

Based on the Findings of Facts #13, #22 - #26, #29, and #32, the MSDE finds that, while the JSES offered credit bearing courses for the required 220 school days per year, it did not ensure that decisions made about the courses to be offered were consistently based on student needs and the guidance it had provided to its schools, in accordance with 34 CFR §§300.2, .101, .149, and COMAR 13A.05.11.

Notwithstanding the violation, based on the Findings of Facts #24, #25, and #32, the MSDE finds that the violation did not impact the student’s ability to receive instruction in credit bearing courses he required to progress through the general curriculum, and that system-wide corrective action has been required to ensure that the violation does not recur. Therefore, this office does not require corrective action to remediate this violation.

Based on the Finding of Fact #29, the MSDE also finds that the student was erroneously enrolled in an English course at the start of the 2017-2018 school year that he had already completed. Therefore, this office finds a violation with respect to that time period.

CORRECTIVE ACTIONS/TIMELINES:

Student-Specific

The MSDE requires that the JSES provide documentation by February 15, 2018 that it has made attempts to locate the student, and if the student is participating in an educational program, has ensured that the current educational program has accurate information about the student’s completion of the required credit in English 9 so that he can be placed in an appropriate English course.

The MSDE also requires that the JSES provide documentation by March 1, 2018 that it has worked with the student’s current education provider to convene an IEP team meeting for the following purposes:

- a. To determine the student's present levels of performance in order to identify the student's needs and to review and revise, as appropriate, the IEP to ensure that it includes goals and services to address those needs; and
- b. To determine the compensatory services or other remedy to be provided by the JSES for the violations identified through this investigation.

If the student is participating in an educational program and compensatory services or other remedy is determined, the JSES must provide documentation of the provision of those services within one (1) year from the date of this Letter of Findings.

School-Based – XXX

The MSDE requires that the JSES provide documentation by June 1, 2018 that the following steps have been taken to ensure the future compliance with the requirements at the XXX:

- a. Clarification is obtained of the services to be provided when the IEP does not include a clear description of those services;
- b. Students are provided with all of the services required by the IEP;
- c. Special education instruction that is provided is designed to assist students with achievement of the annual IEP goals;
- d. Special education instruction is provided in the course content in which students are enrolled; and
- e. The IEP is reviewed and revised, as appropriate, to address interfering behaviors.

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

School-Based – XXX

The MSDE requires that the JSES provide documentation by June 1, 2018 that the following steps have been taken to ensure the future compliance with the requirements at the XXX:

- a. Clarification is obtained of the services to be provided when the IEP does not include a clear description of those services;
- b. Students are provided with all of the services required by the IEP;

- c. Special education instruction that is provided is designed to assist students with achievement of the annual IEP goals;
- d. Special education instruction is provided in the course content in which students are enrolled;
- e. Credits earned are accurately recorded and considered so that students are not enrolled in courses for which they have already earned credit;
- f. The IEP is reviewed and revised, as appropriate, to address interfering behaviors; and
- g. The IEP teams consider all information provided by members of the team.

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

In addition, the MSDE requires that the JSES provide reports on a quarterly basis of the number of vacancies and continuing efforts to fill them in order to ensure IEP implementation at the XXX until one (1) year from the date of this Letter of Findings. The MSDE also requires the JSES to invite the MSDE to participate in any meetings held with the consultant working with the JSES.

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 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

Grace Reusing, Esq.
Ms. Deborah Grinnage-Pulley
January 18, 2018
Page 14

the right to request mediation or to file a due process complaint, if they disagree with the identification, evaluation, placement, or provision of a Free Appropriate Public Education (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: XXXXXXXXX
 Carol A. Williamson
 Sylvia A. Lawson
 Crystal Fleming-Brice
 Tiombe Olumiji
 Dawn Hubbard
 XXXXXXXXX
 XXXXXXXXX
 Dori Wilson
 Anita Mandis
 Nancy Birenbaum