



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

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June 18, 2018

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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: #18-160

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 17, 2018, 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 students.

The MSDE investigated the following allegations:

1. The JSES has not ensured that the student has been provided with the special education instruction required by his Individualized Education Program (IEP) by teachers who meet the State requirements for content knowledge and skills to serve students with disabilities since being placed at the XXXXXXXXXX (XXXXXX), in accordance with 34 CFR §§300.101, .156, .323, and COMAR 13A.05.11 and 13A.12.01 and .04.

2. The JSES has not ensured that the student has consistently been provided with the related services required by their respective IEPs since being placed at the XXX, in accordance with 34 CFR §§300.101 and .323.

### **BACKGROUND:**

The student is seventeen (17) 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.

The student has been placed by the Maryland Department of Juvenile Services (DJS) at the XXX since March 20, 2018.

### **FINDINGS OF FACTS:**

1. The IEP in effect since the student has been placed at the XXX was developed on February 12, 2018 while he was placed by the DJS at the XXXXXXXXXXXXXXXXXXXX XXX (XXXX). The documentation of the February 12, 2018 IEP team meeting states that the student, who is in the 10th grade, is performing at the 3rd grade level in reading, the 3<sup>rd</sup> grade level in math (6<sup>th</sup> grade with accommodations), and the 2nd grade level in written language. It also states that the student requires assistance in understanding concepts and redirection.
2. The February 12, 2018 IEP requires the provision of special education instruction in a separate special education classroom in all academic areas by a special education teacher. It also requires that the student be provided with thirty (30) minutes of counseling each week from a psychologist, guidance counselor, or school social worker in either individual or group settings.
3. At the February 12, 2018 IEP team meeting, the team discussed that the student had missed some counseling services while placed at the XXX and that there was a delay in the initiation of IEP services at the XXX from October 12, 2017 to October 25, 2017. The IEP team agreed that additional counseling services would be provide to compensate for the loss of the required services.
4. The special education instruction and related services are to be provided to assist the named student in achieving goals to do the following by September 14, 2018:
  - a. Demonstrate reading comprehension by determining a theme or central idea of a text and provide at least three (3) supporting details using a graphic organizer from upper 3<sup>rd</sup> grade level to late 4<sup>th</sup> grade level on four (4) out of five (5) assignments;

- b. Increase math skills from the mid 6<sup>th</sup> grade level to early 8<sup>th</sup> grade level with the provision of accommodations and a calculation device, solving one (1) and two (2) step problems independently using addition, subtraction, multiplication, and division with at least 70% accuracy;
  - c. Independently write a logically organized paragraph with topic sentence, three (3) supporting details and concluding sentence from mid 2<sup>nd</sup> grade to upper 3<sup>rd</sup> grade level given graphic organizers with 70% accuracy; and
  - d. Improve ability to appropriately manage emotions and behaviors in school from six (6) out of ten (10) trials to eight (8) out of ten (10) trials.
5. The IEP requires that the student be provided with increased adult supervision, instruction in a small group setting, and a school-wide behavior management plan.
6. The DJS implements a behavior management program, called the Challenge Program, in both the residential and educational settings within each facility. This is a program to assist youth in developing pro-social behavior and individual accountability and responsibility using a “token economy” and social skills education to incentivize positive behavior. In the educational setting, students earn points and receive rewards for positive behavior. If a student displays inappropriate classroom behavior, it is redirected with interventions in the classroom, which can be implemented by both DJS and JSE staff. If a student is in crisis and demonstrates escalating behavior in the classroom, the DJS staff provide supports to the student outside of the classroom, and return the student to the classroom once the student has calmed down and can access instruction.
7. At the XXX, both the JSES and the DJS staff are now implementing Positive Behavior Interventions and Supports (PBIS),<sup>1</sup> and are meeting together to collaborate on the use of the interventions.
8. Since being placed at the XXX in March 2018, the named student has been enrolled in English 10, algebra I, biology, modern world history, and a career research and development course. The school schedule reflects that he has been assigned to receive instruction in these classes from a special education teacher in a separate special education classroom.

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<sup>1</sup> The PBIS is a systems approach to positive and proactive classroom management that includes preventative and responsive approaches that may be effectively implemented with all students in a classroom and intensified to support small groups or a few individual students. It involves the provision of structures and supports by school and school system leadership to support teachers and the collection of data to inform decisions to continue or modify classroom practices and systems (<https://www.pbis.org>).

9. The general education teachers at the XXX teaching English, math, science and social studies hold certification in their respective content areas. While the general education teachers have been developing lesson plans, there is no documentation of regular collaboration with the special education teachers on the provision of special education instruction in the separate special education classroom.
10. Several students were removed from the XXX as a result of a major safety incident that occurred in the residence on Sunday, April 8, 2018, and no additional students are being placed at the facility at this time.
11. Prior to May 14, 2018, there was one special education teacher assigned to the separate special education classroom who was responsible for providing instruction in as many as four (4) different courses to students in the classroom simultaneously. The special education teacher was assisted with redirection and other behavioral supports by the DJS residential assistants (RAs), and at times, by a second special education teacher, who was also responsible for the provision of support in other settings, such as the general education classroom and the Intensive Services Unit (ISU).<sup>2</sup>
12. On May 14, 2018, an additional special education teacher began teaching at the XXX, resulting in a total of four (4) special education teachers assigned to the school. This has permitted the school to assign two (2) special education teachers to provide instruction and support in the separate special education classroom, one of whom also holds certification in English. Correspondence from the principal to teachers documents that there is now time built into the school schedule for collaboration between the special and general education teachers to plan for, and evaluate the effectiveness of, the instruction provided in the separate special education classroom. In addition, the JSES staff have planned for instructional visits to the XXX by the JSES curriculum coordinator and for the provision of professional learning on rubric development and lesson planning in June 2018.
13. At an onsite visit conducted on May 15, 2018, the MSDE staff observed instructional materials, work samples, and the provision of instruction to the student in the separate special education classroom with three (3) other students, two (2) special education teachers, and two (2) residential assistants (RAs) who provided redirection and other supports.
14. A review of student work samples and teacher lesson plans and classroom observations reflect that the instruction has been provided in the courses for which student has been

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<sup>2</sup> 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.

- enrolled and to address the skills described in the IEP goals. The student was observed to be engaged in the instruction and not requiring redirection.
15. The counseling service provider logs document that the student has been provided with at least thirty (30) minutes of counseling per week, and that he is receiving additional thirty (30) minute counseling sessions to make up for those missed at the BCJJS.
  16. On April 13, 2018 and May 23, 2018, reports were made of the named student's progress towards achievement of the annual IEP goals. The reports state that the student has been making sufficient progress to achieve the goals by September, 2018.
    - a. The reports on the reading goal reflect that the student has been successful in reading and analyzing selected stories and text excerpts, and is appropriately using textual evidence in classroom discussions in order to reach targeted scores.
    - b. The reports on the math goal reflect that the student demonstrates frustration quickly when he does not understand a problem, but that he has been cooperative and willing to complete required assignments. The reports state that the student struggles with multi-step problems, but continues to work toward his targeted accuracy score of 70%.
    - c. The reports on the writing goal reflect that the student has been able to write appropriate sentences when given a writing prompts, but continues to struggle with spelling and grammatical language mechanics. The reports state that the student has been successful using visual and graphic organizers when given prompts.
    - d. The reports on the behavior goal state that the student has displayed respect, cooperation, and willingness to work, that he follows directions, and that he works well in the small group setting at the school.\
  17. The student is currently receiving a "B" in algebra I and English 10, a "C" in biology and modern world history, and a "D" in his career research and development class. During the previous school year, while the student was attending school in the community, he failed all of his classes except for geometry.

## **DISCUSSION/CONCLUSIONS:**

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

The IDEA requires that each State Education Agency (SEA) establish qualifications to ensure that personnel necessary to carry out the purposes of the IDEA are appropriately and adequately prepared and trained, including that those personnel have the content knowledge and skills to serve students with disabilities (34 CFR §300.156).

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Maryland requires that instructional personnel maintain a valid Maryland Educator Certificate in the teacher's area of major assignment (COMAR 13A.05.11, 13A.12.01, and 13A.12.02).

Teachers who are certified in special education, in collaboration with general educators, can deliver special education instruction. Special education instruction can also be delivered by teachers certified in elementary, secondary, or subject areas, in collaboration with special educators and related service providers with specialization in the area of the student's need (MSDE Technical Assistance Bulletin, *Improving Outcomes for Students with Disabilities, Curriculum, Instruction, and Assessment*, March 2018).

In this case, the complainant alleges that the student has not been provided with special education instruction from teachers who hold certification in the areas of instruction that was provided and that there has been insufficient staffing to cover all courses offered in the separate special education classroom.

Based on the Findings of Facts #1, #2, #4, #5 - #8, #10, #13, #14, and #16, the MSDE finds that special education instruction has been provided in all of the courses taught in the separate special education classroom in accordance with 34 CFR §§300.101 and .323.

However, based on the Findings of Facts #9, #11, and #12, the MSDE finds that, prior to May 2018, the JSES did not ensure that there was collaboration between the teacher providing special education instruction in the separate special education classroom and the general education teachers who are certified in the areas of content in which instruction was provided, as required. Therefore, this office finds that a violation occurred.

Notwithstanding the violation, based on the Findings of Facts #4, #16, and #17, the MSDE finds that the annual IEP goals were addressed through the provision of special education instruction and IEP supports in the separate special education classroom and that the student is progressing through the general curriculum and making sufficient progress to achieve the IEP goals. Therefore, no corrective action is required.

## **Allegation #2 Provision of Related Services**

Based on the Findings of Facts #3, #4, #15, and #16, the MSDE finds that the documentation does not support the allegation that student is not being provided with related services required by the IEP, as required by 34 CFR §§300. Therefore, no violation is identified with respect to this allegation.

## **TIMELINE:**

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

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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.

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 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:     XXXXXXXXXX  
       Carol A. Williamson  
       Sylvia A. Lawson  
       Crystal Fleming-Brice  
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