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January 27, 2012

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Maryland State Department of Education
200 West Baltimore Street
Baltimore, Maryland 21201

RE: XXXXX
Reference: #12-039

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 our investigation.

ALLEGATIONS:

On November 29, 2011, the MSDE received a complaint from Deborah St. Jean, Esq., Director of the Juvenile Protection Division, Maryland State Public Defender, hereafter “the complainant,” filed on behalf of the above-referenced student. In that correspondence, the complainant alleged that both the Dorchester Country Public Schools (DCPS) and the MSDE, Juvenile Services Education Program, violated certain provisions of the Individuals with Disabilities Education Act (IDEA) and related State requirements with respect to the above-referenced student. The MSDE investigated the allegations listed below:

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Dorchester County Public Schools (DCPS)

1. The DCPS did not ensure that the parent surrogate appointed for the student had the knowledge and skills to provide adequate representation of the student, in accordance with 34 CFR §300.519 and Md. Code Ann., Educ. §8-412.
2. The DCPS did not ensure that the student's mother was provided with written notice of the Individualized Education Program (IEP) team meeting held October 13, 2011, in accordance with 34 CFR §300.322 and COMAR 13A.05.01.07.
3. The DCPS did not provide the student's mother with prior written notice of the IEP team's determinations made at the October 13, 2011 meeting, in accordance with 34 CFR §300.503 and COMAR 13A.05.01.12.
4. The DCPS did not provide the student's mother with a copy of documents within five (5) business days prior to, or after, the October 13, 2011 IEP team meeting, in accordance with Md. Code Ann., Educ. §8-405 and COMAR 13A.05.01.07D(3).
5. The DCPS did not ensure that the student was provided with the behavioral supports required by the IEP between the beginning of the 2011 – 2012 school year and November 30, 2011, in accordance with 34 CFR §§300.101 and .323.
6. The DCPS did not ensure that the student's IEP addressed the student's academic and social/emotional/behavioral needs between October 13, 2011 and November 30, 2011, in accordance with 34 CFR §§300.320 and .324.

Maryland State Department of Education, Juvenile Services Education Program (MSDE/JSEP)

7. The MSDE/JSEP has not ensured that the student's IEP addressed the student's academic and social/emotional/behavioral needs since November 30, 2011, in accordance with 34 CFR §§300.320 and .324.

INVESTIGATIVE PROCEDURES:

1. Ms. Tyra Williams, Education Program Specialist, MSDE, was assigned to investigate the allegations in the complaint.
2. On November 30, 2011, the MSDE sent a copy of the complaint, via facsimile, to Ms. Angela McPeake Gebert, Supervisor of Special Education, DCPS.
3. On December 6, 2011, Ms. Williams conducted a telephone interview with the complainant to clarify the allegations to be investigated.
4. On December 8 and 20, 2011, the MSDE received documents from the complainant to be considered during the complaint investigation.

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5. On December 14, 2011, the MSDE sent a copy of the complaint, via facsimile, to Dr. Mark Mechlinski, Director/Juvenile Services Program, MSDE/JSEP; and Ms. Zondra Johnson, Special Education Coordinator, MSDE/JSEP, after determining that the student was receiving services in an education program operated by the MSDE/JSEP.
6. On December 16, 2011, the MSDE sent correspondence to the complainant that acknowledged receipt of the complaint and identified the allegations subject to this investigation. On that same date, the MSDE also notified the DCPS and the MSDE/JSEP of the allegations to be investigated and requested that the DCPS and the MSDE/JSEP review the alleged violations.
7. On January 5, 2012, Ms. Williams and Mrs. Koliwe Moyo-Stephens, Education Program Specialist, MSDE, conducted a site visit at XXXXXXXXXXXXXXXXXXXX to review the student's educational record, and interviewed the following school staff:
 - a. Ms. XXXXXXXXXXX, Administrative Guidance Secretary;
 - b. Ms. XXXXXXX, Special Education Teacher; and
 - c. Dr. XXXXXXXXXXXXXXX, Principal.

Ms. Gebert and Ms. Frances Brannock, Parent Surrogate Trainer/Family Support Services Coordinator, DCPS, participated in the site visit, as representatives of the DCPS and to provide information on the DCPS policies and procedures, as needed.
8. On January 9, 2012, the MSDE received copies of documents from the student's educational record from the DCPS, which were requested at the site visit on January 5, 2012.
9. On January 10, 2012, Ms. Williams conducted an interview with Ms. Johnson and reviewed the student's educational record at the MSDE.
10. On January 10, 2012, the MSDE received additional documentation from the DCPS to be considered during the complaint investigation.
11. On January 12, 2012, the MSDE received additional documentation from the MSDE/JSEP to be considered during the complaint investigation.
12. On January 17, 2012, Ms. Williams unsuccessfully attempted to contact the student's Maryland Department of Juvenile Services (DJS) caseworker by telephone to request information about the student's residential and educational placements.
13. On January 18, 2012, Ms. Williams conducted a telephone interview with the complainant about the allegations being investigated.
14. On January 22, 2012, Ms. Williams sent electronic correspondence to the student's DJS caseworker to request information about the student's residential and educational placements.

15. On January 24 and 25, 2012, the MSDE received electronic correspondence from the complainant regarding the student's educational placement.
16. On January 26, 2012, the MSDE received electronic correspondence from Talbot County Public Schools (TCPS) regarding the student's enrollment in TCPS.
17. On January 26, 2012, Ms. Williams sent the student's DJS caseworker additional electronic correspondence and, again, unsuccessfully attempted to reach her by telephone to request information about the student's residential and educational placements.
18. Documentation provided by the parties was reviewed. The documents referenced in this Letter of Findings include:
 - a. Correspondence from the complainant to the MSDE, alleging violations of the IDEA, received on November 29, 2011;
 - b. IEP, dated May 4, 2011;
 - c. IEP Summary, dated May 4, 2011;
 - d. Functional Behavior Assessment, dated May 5, 2011;
 - e. Behavior Intervention Plan, dated May 5, 2011;
 - f. Court Order, Circuit Court for Wicomico County, dated June 21, 2011;
 - g. Arrow Child and Family Services, Placement Authorization, dated June 24, 2011;
 - h. Correspondence from XXXXXXXXXXXX to the DCPS regarding the student's enrollment in the DCPS, dated June 27, 2011;
 - i. DCPS Enrollment Documents, dated July 27 - 28, 2011;
 - j. DCPS Student Behavior Logs from September 9, 2011 through November 29, 2011;
 - k. DCPS Parent Surrogate Training Agenda, dated September 26, 2011;
 - l. DCPS Parent Surrogate Guidelines, undated;
 - m. Correspondence from the DCPS Central Office staff to XXXXXXXXXXXX XXXXXX staff, dated September 26, 2011;
 - n. IEP meeting notice, dated September 28, 2011;
 - o. DCPS Discipline Log from September 28, 2011 through November 15, 2011;
 - p. Draft IEP, dated October 6, 2011;
 - q. IEP, dated October 13, 2011;
 - r. IEP Summary, dated October 13, 2011;
 - s. Functional Behavior Assessment, dated October 13, 2011;
 - t. Behavior Intervention Plan, dated October 13, 2011;
 - u. MSDE/JSEP Profile Log, dated November 30, 2011 through January 4, 2012;
 - v. MSDE/JSEP Request for Records, dated December 1, 2011;
 - w. MSDE/JSEP Communication Log, dated December 2, 2011 through January 4, 2011;
 - x. IEP, dated December 2, 2011;
 - y. Correspondence to the student's mother from MSDE/JSEP, dated December 9, 2011;
 - z. DCPS Parent Surrogate Termination Memorandum, dated January 3, 2012; and

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- aa. Electronic correspondence from Talbot County Public Schools dated January 26, 2012.

BACKGROUND:

The student is twelve (12) years old, is identified as a student with an emotional disability under the IDEA and receives special education instruction. The student is committed to the custody of the Maryland Department of Juvenile Services (DJS).

Prior to the time period covered by this investigation, the DJS placed the student at XXXXXX XXX, a residential treatment center located in Baltimore County, Maryland. While placed there, the student attended the XXXXXXXXXXX, a public separate special education school in the Baltimore County Public School System.

During the time period addressed by this investigation, the DJS placed the student in the following residential and educational settings listed below:

- From June 24, 2011 until November 30, 2011, the DJS placed the student in a foster care home located in Dorchester County, Maryland. From the start of the 2011-2012 school year until November 30, 2011, the student attended XXXXXXXXXXXXXXXXXXXX (XXXXXXXX), a Dorchester County Public School.
- From November 30, 2011 until January 4, 2012, the DJS placed the student at the XXXX XXXXX XXXXXXXXXXX (XXXX), a XXXXX located in Wicomico County, Maryland. While placed there, the student received special education services from MSDE/JSEP, which operates an educational program at XXXXX .
- There is no information or documentation of where the DJS has placed the student residentially since January 4, 2012.
- There is no information or documentation that the student was enrolled in school from January 4, 2012 until January 19, 2012.
- Since January 19, 2012, the student has been attending XXXXXXXXXXXXXXX, a Talbot County Public School (TCPS).

ALLEGATION #1: APPOINTMENT OF PARENT SURROGATE - DCPS

FINDINGS OF FACTS:

1. The DCPS has guidelines for appointing parent surrogates and requires individuals who serve as parent surrogates to receive training. The training includes a review of the education decision making process and the roles and responsibilities of the parent surrogate (Docs. k and l).

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2. On September 26, 2011, the DCPS appointed an individual to serve as the student's parent surrogate. There is documentation that, on the same date, this individual received parent surrogate training, in accordance with the DCPS guidelines (Docs. k and m).
3. On January 3, 2012, the DCPS parent surrogate appointment was terminated, because the student is no longer residentially placed by DJS in Dorchester County, Maryland (Doc. z).

DISCUSSION/CONCLUSION:

The public agency must ensure that the person proposed to serve as the parent surrogate has no interest that conflicts with the interest of the student and that the person has the knowledge and skills needed to provide adequate representation of the student (Md. Code Ann., Educ., §8-412).

In this case, the complainant alleges that the individual who was appointed to serve as the student's parent surrogate did not have the knowledge and skills needed to provide adequate representation of the student. However, based on the Findings of Facts #1 - #3, the MSDE finds that the individual appointed to serve as the parent surrogate, while the student was enrolled in the DCPS, received training in accordance with the guidelines established by the DCPS. Therefore, the MSDE does not find that a violation occurred with regard to this allegation.

ALLEGATIONS #2 - #4: PROVISION OF PARENTAL RIGHTS TO THE STUDENT'S MOTHER - DCPS

FINDINGS OF FACTS:

4. On June 20, 2011, the Circuit Court for Wicomico County, Maryland, issued an order that the student be "committed to the care and custody of the Department of Juvenile Services." The Court order grants DJS "limited educational guardianship" of the student, and states that the commitment is:

"subject to provisions of the Juvenile Causes Law (Title 3, Subtitle 8, Courts Article, Annotated Code of Maryland)." (Doc. f).
5. On June 24, 2011, the DJS placed the student in a foster care home located in Dorchester County, Maryland (Docs. g).
6. On July 27, 2011, the student's foster parent enrolled him in the DCPS. The educational record provided to the DCPS reflected that the student's mother did not participate in the last IEP team meeting, which was held while the student was placed by the DJS in Baltimore County (Docs. h and i).
7. At the start of the 2011-2012 school year, the DCPS appointed a parent surrogate for the student (Docs. m).

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8. On October 13, 2011, an IEP meeting was held by the DCPS. There is documentation that on September 28, 2011, the parent surrogate was provided with an invitation to the October 13, 2011 IEP team meeting. There is no documentation that the student's mother was invited to the October 13, 2011 meeting (Doc. n and review of the educational record).
9. The parent surrogate did not participate in the October 13, 2011 IEP team meeting, but the student's mother participated by telephone at the request of the complainant, who also participated in the meeting (Docs. q and r).
10. There is documentation that, at the October 13, 2011 meeting, the IEP team considered a draft IEP, but there is no documentation that the parent surrogate or the student's mother were provided with a copy of the draft IEP prior to the meeting (Docs. q, p, and r).
11. There is no documentation that either the student's mother or the parent surrogate was provided with prior written notice of the decisions made by the IEP team on October 13, 2011 or that they were provided with a revised IEP following the meeting (Review of the educational record).

DISCUSSION/CONCLUSIONS:

Preliminary Discussion:

Requirements to Appoint a Parent Surrogate

The IDEA requires the public agency to ensure the rights of a student with a disability are protected if a parent cannot be identified, if after reasonable efforts the public agency cannot locate a parent, if the child is a ward of the State, or if the child is an unaccompanied homeless youth (34 CFR § 300.519). The IDEA does not require the automatic appointment of a parent surrogate for every student with disability who is a ward of the State if the public agency determines that the student's rights are otherwise protected (United States Department of Education, Office of Special Education and Rehabilitative Services, Letter to Caplin, September 6, 2011 and Analysis of Comments and Changes to the IDEA, *Federal Register*, Vol. 71, No. 156, p. 46566, August 14, 2006).

However, in Maryland, a parent surrogate must be appointed at any point in the educational decision making process if it is suspected that the child is disabled and if the child is a ward of the State. A child is a ward of the State if a State or county agency or official has been appointed legal guardian, or if the child who has been committed by a Court of competent jurisdiction to the legal custody of a State or county agency or official with the express authorization [emphasis added] that the State or county agency or official make educational decisions for the student (Md. Ann. Code, Educ. § 8-412).

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Requirements to Provide Parent Rights to Biological and Adoptive Parents

Under the IDEA, a “parent” means a biological or adoptive parent, a foster parent unless prohibited by State law, a guardian, a relative with whom the student lives, or a parent surrogate. Where more than one party qualifies as a parent under IDEA, if a biological or adoptive parent attempts to act as the parent, [emphasis added] that individual must be presumed to be the parent unless he or she does not have the authority to make decisions for the student or there is a judicial order specifying that another person is to act as the parent (34 CFR §300.30).

When the IDEA regulations were submitted for public comment, there was concern that permitting a foster parent to serve as a parent under the IDEA would “withdraw the rights of biological parents without due process of law.” In response, the United States Department of Education Office of Special Education Programs (OSEP) explained that the IDEA requires that the biological parent be presumed to be the parent unless he or she does not have legal authority to make decisions for the student or there is a judicial order specifying some other person to act as the parent. The OSEP stated that it does not believe that provisions regarding lack of legal authority or judicial orders would apply “unless there has already been a determination, through appropriate legal processes, [emphasis added] that the biological parent should not make educational decisions for the child or that another person has been ordered to serve as the parent” (Analysis of Comments and Changes to the IDEA, Federal Register, Vol. 73, No. 231, p. 46566, August 14, 2006).

In juvenile Court proceedings in Maryland, the Court may grant custody to the DJS. Upon a grant of custody to the DJS, the Court may grant “limited guardianship” to the DJS. “Limited guardianship” gives the DJS the authority to consent to educational services when a parent is unavailable, unwilling, or unable to consent to services (Md. Code Ann., Cts. & Jud. Proc. §3-819). The parent maintains the right to participate in decisions about major changes in the child’s life, unless those changes are of matters protected by the child’s privacy rights or are contrary to the child’s best interest (COMAR 07.02.11.07).

A Court’s grant of “guardianship” to a public agency occurs at the conclusion of a “termination of parental rights” hearing. The grant of “guardianship” indicates that the rights of the student’s biological parents have been terminated. Once the biological parents’ rights have been terminated, the parents no longer have legal authority to make any decisions for the student (Md. Code Ann., Fam. Law §§ 5-320(a) and 5-341 and COMAR 07.02.11.07).

Allegation #2: Invitation to the Student’s Mother to the October 13, 2011 IEP Team Meeting

To ensure that the rights of a student are protected, the student’s parent must be provided with the opportunity to participate in IEP team meetings (34 CFR §300.322). To ensure parent participation, the school system must provide parents with written notice at least ten (10) days in advance of the meeting. The notice must state the purpose, time, date, and location of the meeting, and who will be in attendance (COMAR 13A.05.01.07).

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Based on the Findings of Facts #4 and #5, the MSDE finds that the student was committed to the custody of the DJS by the Circuit Court for Wicomico County, and the DJS was granted the authority to make educational decisions for the student. Therefore, the student was a ward of the State, and under Maryland law, a parent surrogate was required to be appointed.

Based on the Finding of Fact #4 the MSDE finds that there is no information or documentation that a public agency has been awarded “guardianship” of the student or that the Court has ordered that another person is to serve as the parent for educational decision purposes. Therefore, there is no documentation that the student’s mother no longer has the right to make decisions for the student.

Based on the Findings of Facts # 4, #6, #7, and #8, the MSDE finds that, while the rights of the student’s mother have not been terminated, there is no documentation that the student’s mother was acting as the parent under IDEA when the DCPS scheduled the October 13, 2011 IEP team meeting. Therefore, the MSDE finds that the DCPS was not required to provide her with a written invitation to the October 13, 2011 meeting and does not find that a violation occurred.

Allegation #3: Provision of Prior Written Notice of the Decisions Made by the IEP Team on October 13, 2011

Written notice must be given to parents a reasonable time before the public agency proposes or refuses to initiate or change the identification, evaluation, educational placement, or provision of free appropriate public education (FAPE). This notice includes a description of the action proposed or refused, the basis for the decision, other options considered, and the data used in making the decision (34 CFR §300.503). It is important that the parent be provided with this written notice so that the parent can determine whether to exercise the right to utilize the dispute resolution procedures to resolve any disagreement with the team’s decisions.

Based on the Finding of Fact #9, there is documentation that the student’s mother was acting as the parent under IDEA, by participating in the October 13, 2011 IEP team meeting. Therefore, at that point in time, the DCPS was required to provide the student’s mother with parental rights, such as prior written notice of the team’s decisions.

Based on the Finding of Fact #11, the MSDE finds that there is no documentation that the DCPS provided the student’s mother with prior written notice of the decisions made by the team on October 13, 2011. Therefore, the MSDE finds that a violation has occurred.

Allegation #4: Provision of Documents to the Student’s Mother Prior to, and After, the October 13, 2011 IEP Team Meeting

Parents must be provided with a copy of each assessment, report, data chart, draft IEP, or other document that the team plans to discuss at an IEP team meeting at least five (5) business days before the meeting. Additionally, the public agency must provide parents with a completed IEP not later than five (5) business days after an IEP team meeting (Md. Code Ann., Educ., § 8-405(c) (2010) and COMAR 13A.05.01.07D).

Based on the Findings of Facts #6, #8, and #10, the MSDE finds that there is no documentation that the student's mother was attempting to act as the parent under the IDEA at the time the DCPS scheduled the October 13, 2011 IEP team meeting. Thus, the DCPS was not required to provide her with copies of documents to be discussed at the October 13, 2011 IEP team meeting, prior to the meeting and, as a result, the MSDE does not find that a violation occurred with respect to this aspect of the allegation.

Based on the Finding of Fact #9, the MSDE finds that there is documentation that the student's mother was acting as the parent under the IDEA at the time of the October 13, 2011 meeting by participating in the meeting. Therefore, at that point in time, the DCPS was required to provide her with a copy of the revised IEP following the meeting. Based on the Finding of Fact #11, the MSDE finds that there is no documentation that the DCPS provided the student's mother with a copy of the revised IEP following the meeting, and that a violation occurred with respect to this aspect of the allegation.

ALLEGATION: # 5: PROVISION OF BEHAVIORAL SUPPORTS FROM THE START OF THE 2011-2012 SCHOOL YEAR UNTIL NOVEMBER 30, 2011

FINDINGS OF FACTS:

12. The IEP in effect at the beginning of the 2011-2012 school year was developed at the XXXXXXXXXXXX, a public separate special education school located in the Baltimore County Public School System that provides a "highly structured academic" environment with "behavioral and therapeutic services." The IEP requires that the student receive special education instruction, weekly counseling, and daily social skills training. It also requires the use of behavior point sheets, provision of rewards and incentives, access to frequent breaks, and the provision of "extra adult support" to assist the student throughout the school day. It further requires the provision of crisis intervention services "within the behavioral support program of a public separate day school" (Docs. h, b, c, d, and e).
13. Prior to the start of the 2011-2012 school year, the DJS placed the student in a foster care home in Dorchester County, Maryland. At the start of the school year, the DCPS placed the student at XXXXXXXXXXXX, a Dorchester County Public School, where he was assigned to both general education and separate special education classes. There is no documentation that an IEP team determined whether the program could be implemented in a less restrictive environment than the educational placement required by the IEP or that an IEP team determined that the services provided were comparable to those being provided in a separate special education school (Docs. i, j, and r).
14. On October 13, 2011, the IEP team at XXXXXXXXXXXX revised the IEP to discontinue weekly counseling services and require that the student be provided with access to the guidance counselor, as needed. The IEP was also revised to require that consultation occur between the school psychologist, the student's teachers, and the student's private therapist (Docs. q, r, s, and t).

15. Behavior tracking logs, used by school staff to monitor the student's behavior and allow the student to earn rewards, indicate that the student was provided with social skills training on a daily basis, breaks, rewards and incentives, and adult support in the general education and special education classrooms from October 13, 2011 until November 30, 2011 (Doc. j).

DISCUSSION/CONCLUSIONS:

The public agency is required to ensure that the student is provided with the special education and related services in the educational placement required by the IEP (34 CFR §§300.101 and .103). If a student with an IEP in a previous public agency transfers to a new public agency in the same State, the new public agency (in consultation with the parents) must provide the student with a FAPE, including services comparable to those described in the student's IEP from the previous public agency, until the new public agency either adopts the IEP from the previous public agency; or develops, adopts, and implements a new 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 [emphasis added] (Analysis of Comments and Changes to the IDEA, *Federal Register*, Vol. 71, No. 156, p. 46681, August 14, 2006).

If the new public agency does not adopt the educational placement decision of the previous public agency, the public agency must likewise ensure that any decision to change the educational placement is made by the IEP team (COMAR 13A.05.01.10).

Start of the 2011 – 2012 School Year to October 13, 2011

Based on the Findings of Facts #12 and #13, the MSDE finds that from the start of the 2011-2012 school year until October 13, 2011, the student was not provided with comparable services, as determined by the IEP team, in the educational placement required by the IEP. Based on those Findings of Facts, the MSDE further finds that there is no documentation that the IEP team determined that the IEP could be implemented in a different educational placement than was required by the IEP developed by the previous public agency. Therefore, the MSDE finds that a violation occurred with respect to this time period.

October 13, 2011 to November 30, 2011

Based on Findings of the Facts #14 and #15, the MSDE finds that there is documentation that, from October 13, 2011 until November 30, 2011, the student was provided with the behavioral supports in the educational placement required by the IEP. Therefore, the MSDE does not find that a violation occurred with respect to this time period.

ALLEGATION #6: IEP THAT ADDRESSES THE STUDENT'S ACADEMIC AND SOCIAL/EMOTIONAL/BEHAVIORAL NEEDS BETWEEN OCTOBER 13, 2011 AND NOVEMBER 30, 2011 - DCPS

FINDINGS OF FACTS:

16. On October 13, 2011, the IEP team at XXXXXXXXXX considered information from the student's teachers that the student's behavior continues to be "extremely disruptive and impacts his educational performance significantly." However, because school staff reported that the student was beginning to demonstrate improvement in that behavior, the team decided that it was appropriate to continue the supports already in place. The IEP team determined that because the student "has a therapist outside of school," he no longer needed weekly counseling services in school, but that he would be provided with access to the services of the guidance counselor, as needed. The IEP team also decided that the school psychologist would consult with the student's teachers and private therapist (Docs. o, j, q, r, and s).
17. At the October 13, 2011 meeting, the IEP team considered the concerns of the student's mother that the student be provided with the ability to take breaks when he becomes frustrated with work. The team decided that the student would be provided with the ability to take breaks, but that the student would be required to inform school staff that he is doing so when he leaves the classroom (Docs. q, r, s, and t).
18. At the October 13, 2011 meeting, the team also considered information from the student's teachers about the student's performance in the areas of reading comprehension and phonics. The IEP indicates that the teachers reported that the student is becoming "more comfortable with answering comprehension questions." Based on this information, the team decided that the IEP remained appropriate to address the student's reading comprehension needs (Docs. q, r, s, and t).
19. The IEP developed on October 13, 2011 also states that the teachers reported "a period of adjustment," and that the student "has shown no data to support [the goal related to improving reading phonics]." However, the team decided that the student was "making progress on this goal," and that the IEP remained appropriate to address the student's reading phonics needs. However, there is no documentation of the basis for this decision (Doc. q).
20. At the October 13, 2011 meeting, the IEP team determined that the least restrictive environment (LRE) in which the IEP could be implemented is a combination of general and separate special education classes. There is documentation that the IEP team determined the supplementary aids and services that were needed in order to implement the IEP in the separate special education classroom. However, there is no documentation of consideration of the supplementary aids and services needed in the general education classroom in order to implement the IEP in that setting (Docs. q and r).

DISCUSSION/CONCLUSIONS:

When reviewing and revising the IEP, the team must consider the strengths of the student, concerns of the parents, the results of the most recent evaluations, and information about the student's academic and functional performance in the classroom. In the case of a student whose behavior impedes his or her learning or that of others, the team must consider strategies, including positive behavioral interventions and supports, to address that behavior (34 CFR §§300.320 and .324).

The team must also determine the educational placement in which the IEP can be implemented. The public agency must ensure that the IEP is implemented in the LRE in which the goals can be satisfactorily achieved with the use of supplementary aids and services (34 CFR §§300.114 and .115).

During the investigation of an allegation that a student has not been provided with an appropriate educational program and placement under the IDEA, the State Educational Agency must determine whether proper procedures were followed and whether there is data to support those decisions (the United States Department of Education, Office of Special Education Programs, Letter #00-20, July 17, 2000 and Analysis of Comments and Changes to the IDEA, *Federal Register*, Vol. 71, No. 156, p. 46601, August 14, 2006).

Based on the Findings of Facts #16, #17, and #18, the MSDE finds that the team considered information from the student's teachers and the student's mother when reviewing and revising the IEP. However, based on the Finding of Fact #19, the MSDE finds that there is no documentation of the basis for the team's decision that the student was making progress toward achieving the goal to improve phonics.

Additionally, based on the Finding of Fact #20, the MSDE finds that there is no documentation that the team considered the supplementary aids and services needed to implement the IEP in the general education classroom. Therefore, the MSDE finds that there is no documentation that the IEP in effect since October 13, 2011 has addressed the student's needs, and that a violation occurred.

ALLEGATION: # 7 IEP THAT ADDRESSES THE STUDENT'S ACADEMIC SOCIAL/EMOTIONAL, AND BEHAVIORAL NEEDS SINCE NOVEMBER 30, 2011 – MSDE/JSEP

FINDINGS OF FACTS:

21. On November 30, 2011, the student was placed by the DJS in the XXXXX, which has an educational program operated by MSDE/JSEP (Doc. u).
22. On December 9, 2011, the MSDE/JSEP contacted the student's mother to determine a mutually convenient date on which an IEP team meeting could be held to review and revise the student's IEP (Docs. v, w, x, and y).

23. Before the MSDE/JSEP could convene the IEP team meeting, the DJS withdrew the student from the education program (Doc. u).
24. There is no documentation of where the DJS has placed the student residentially since January 4, 2012. However, since January 19, 2012, the student has been attending XXXXXXXXXXXX and the Talbot County Public Schools (TCPS) staff report that an IEP team meeting is being scheduled to review and revise the student's program to ensure that it is appropriate (Doc. aa and electronic correspondence from the complainant).

DISCUSSION/CONCLUSIONS:

Based on the Findings of Facts #21, #22, #23, and #24, the MSDE finds that, upon the student's enrollment in the educational program at XXXXX, the MSDE/JSEP attempted to convene the IEP team to review the IEP, but that the DJS withdrew the student from the education program before the meeting could be held. Therefore, the MSDE does not find that a violation occurred with respect to MSDE/JSEP.

ADDITIONAL DISCUSSION: DJS RESPONSIBILITY

When a Court "commits" a child to a local department of social services or the DJS, it transfers custody of the child to that agency (Md. Cts. & Jud. Proc. Code Ann. §§3-801 and 3-8A-01). "Custody" is defined as both a right and an obligation to provide ordinary care for a child and to determine a residential placement for the child. The purpose of a commitment to the local department of social services or the DJS is to, among other things, secure for the child custody, care, and discipline as nearly as possible equivalent to that which the child's parents should have given (Md. Cts. & Jud. Proc. Code Ann. §3-802).

Therefore, when a child is committed to the custody of a local department of social services or the DJS, that agency has the responsibility to ensure that the child is enrolled in school, just as the child's parents would be responsible for doing if the child remained in the parents' custody. Based on Finding of Fact #24, the MSDE finds that there is no documentation that the DJS took steps to enroll the student in school from January 4, 2012 until January 19, 2012.

As a State Education Agency, the MSDE is required to ensure that public agencies carry out their responsibilities for the provision of a FAPE to students in the State of Maryland (34 CFR §300.149). The IDEA defines "public agency" as the State Education Agency, local education agencies, and any other political subdivisions of the State that are responsible for providing education to children with disabilities (34 CFR §300.33).

In Maryland, public agencies responsible for the provision of education to children are defined as local school systems, as well as other State agencies, including the DJS when the student is attending a school operated by, or contracted with, that public agency. However, the DJS is not included in this definition when a student is placed in the community and attends a local public school (COMAR 13A.05.01.03).

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There is no information or documentation that the DJS served as a public agency responsible for the provision of education services from January 4, 2012 to January 19, 2012. Therefore, this office may not investigate concerns related to the DJS' enrollment of the student in school during this time period. However, by copy of this Letter of Findings, the MSDE is informing the DJS officials of our serious concerns about this matter, and is asking that they take immediate steps to ensure that students placed in their custody are properly enrolled in school.

CORRECTIVE ACTIONS/TIMELINES:

Student-Specific

The MSDE requires the DCPS to provide documentation by April 1, 2012, that it has offered the student *compensatory services*¹ or another remedy to redress the loss of special education instruction and related services in the educational program required by the IEP from the start of the 2011-2012 school year until October 13, 2011 and the loss of an IEP that addresses his needs from October 13, 2011 until the IEP is reviewed and revised. The documentation must reflect that the remedy was developed after consultation and in collaboration with the school system in which the student is placed.

School-Based

The MSDE requires the DCPS to provide documentation by June 1, 2012, of the steps it has taken to ensure that XXXXXXXXXXXX staff properly implements the requirements for providing parental rights, ensuring appropriate services are provided to students transferring from other public agencies, and reviewing and revising the IEP. The documentation must include a description of how the DCPS will evaluate the effectiveness of the steps taken and monitor to ensure that the violations do not recur.

Additionally, the findings in the Letter of Findings will be shared with the MSDE's Office of Quality Assurance and Monitoring (QAM) for its consideration during monitoring of the school system. Documentation of all corrective action taken is to be submitted to this office to: Attention: Chief, Complaint Investigation/Due Process Branch, Division of Special Education/Early Intervention Services, MSDE.

TECHNICAL ASSISTANCE:

Technical assistance is available to the parties through Mrs. Martha J. Arthur, Education Program Specialist, MSDE. Mrs. Arthur may be contacted at (410) 767-0255. Please be advised that both parties 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 fact or conclusions reached in this Letter of Findings. The additional written documentation must not have been provided or otherwise available to this

¹ Compensatory services, for the purposes of this letter, mean the determination by the IEP team as to how to remediate the denial of appropriate services to the student (34 CFR §300.151).

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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 consistent with the timeline requirements as 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 student's parents 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 a 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/tw

cc: XXXXX
Sam J. Abed
Henry V. Wagner, Jr.
XXXXX
Karen Salmon
Kristen Mentges
XXXXX
Dori Wilson
Martha J. Arthur
Tyra Williams