



Lillian M. Lowery, Ed.D.
State Superintendent of Schools

200 West Baltimore Street • Baltimore, MD 21201 • 410-767-0100 • 410-333-6442 TTY/TDD • MarylandPublicSchools.org

January 3, 2014

Grace Reusing, Esq.
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 Program
Maryland State Department of Education
200 West Baltimore Street
Baltimore, Maryland 21201

RE: Maryland State Department of Education
Juvenile Services Education Programs
Reference: #14-039

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 above-referenced group of students. This correspondence is the report of the final results of the investigation.

ALLEGATIONS:

On November 5, 18, and 22, 2013, the MSDE received a complaint from Grace Reusing, Esq., Office of the Public Defender, hereafter “the complainant,” on behalf of seven (7) named students with disabilities and all other students with disabilities placed in the fourteen (14) Maryland Department of Juvenile Services facilities across the State. In that correspondence, the complainant alleged that the Maryland State Department of Education, Juvenile Services Education Program (MSDE, JSEP) 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 MSDE, JSEP has not ensured that an educational program that meets the MSDE's educational standards has been provided to students with disabilities, in accordance with 34 CFR §300.149.
2. The MSDE, JSEP has not ensured that students are provided with special education instruction to enable them to be involved in and make progress in the general education curriculum, in accordance with 34 CFR §§300.101, .103, .320, and .323.
4. The MSDE, JSEP has not ensured that students participate in State and district-wide assessments as required by their Individualized Education Programs (IEPs), in accordance with 34 CFR §§300.101, .103, .320, and .323.
3. The MSDE, JSEP has not ensured that proper procedures are followed when reviewing and revising IEPs, in accordance with 34 CFR §§300.101, .103, .114 - .117, .320, and .323.
4. The MSDE, JSEP has not ensured that student educational records are accurately maintained and transferred to receiving schools, in accordance with 34 CFR §300.624, COMAR 13A.08.02 and *The Maryland Student Records System Manual*.
5. The MSDE, JSEP has not ensured that students have been provided with special education instruction from qualified math and English teachers, in accordance with 34 CFR §§300.18 and 156.

INVESTIGATIVE PROCEDURES:

1. On November 15 and 21, 2013, and December 3, 2013, the MSDE sent correspondence to the complainant that acknowledged receipt of the correspondences containing allegations of violations of the IDEA and identified the allegations subject to this investigation. On the same dates, the MSDE notified the MSDE, JSEP of the allegations and requested that the MSDE, JSEP review the alleged violations.
2. On November 22, 2013, Ms. Anita Mandis, Section Chief, Complaint Investigation Section, MSDE, conducted a telephone interview with the complainant about the allegations to be investigated.
3. On November 26, 2013, Ms. Mandis and Mrs. Martha J. Arthur, Education Program Specialist, MSDE, met with Ms. A. Lisa Nelson, Field Director, MSDE, JSEP, and Mr. Samuel Kratz, Special Education Coordinator, MSDE, JSEP at the MSDE to discuss the allegations. On that date, the MSDE requested that the MSDE, JSEP provide documents for review in order to conduct the investigation.
4. On December 2, 19, 27, and 30, 2013, and January 1 and 2, 2014, the MSDE, JSEP provided information and documents, including student educational records, to the MSDE for consideration during the investigation.

5. On December 12, 26, and 30, 2013, requests were made by Ms. Mandis for documents from the MSDE, JSEP.
6. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
 - a. MSDE, JSEP Instructional Program Calendar from July 2013 through July 2014;
 - b. Weekly schedules for the Juvenile Services Education Programs;
 - c. Correspondence from the complainant to the MSDE containing allegations of violations of the IDEA and the COMAR, received on November 5, 18, and 22, 2013;
 - d. The Education Coordinating Council for Juvenile Services Educational Programs, *Annual Report, FY 2013*;
 - e. Written response from the MSDE, JSEP, received on December 19, 2013; and
 - f. Electronic mail message from the MSDE, JSEP to the MSDE, received on January 1, 2014.

BACKGROUND:

In accordance with the State law, the MSDE was given the responsibility for developing and implementing the Juvenile Services Educational Programs at all fourteen (14) residential facilities of the Maryland Department of Juvenile Services (DJS) by July 1, 2014 (Md. Code Ann., Educ., §22-303).¹ During FY 2013, the MSDE, JSEP, which was already providing educational programming in the first seven (7) DJS facilities listed below, assumed the educational programming in the remaining facilities:

XXXXXXXXXXXXXXXXXXXX (XXXXXX);
XXXXXXXXXXXXXXXXXXXX (XXXXXXXXXX);
XXXXXXXXXXXXXXXXXXXXXXXXXXXX (XXXXXX);
XXXXXXXXXXXXXXXXXXXX (XXXXXX)
XXXXXXXXXXXX;
XXXXXXXXXXXXXXXXXXXX (XXXX);
XXXXXXXXXXXXXXXXXXXXXXXXXXXX (XXXXXXXXXX);
XXXXXXXXXXXXXXXXXXXXXXXXXXXX (XXXXXXXXXX);
XXXXXXXXXXXXXXXXXXXXXXXXXXXX (XXXXXX);
XXXXXXXXXXXXXXXXXXXX (XXXXXXXXXX);
XXXXXXXXXXXXXXXXXXXXXXXXXXXX (XXXXXXXXXX);
XXXXXXXXXXXXXXXXXXXX (XXXXXX);
XXXXXXXXXXXXXXXXXXXXXXXXXXXX (XXXXXXXXXX); and
XXXXXXXXXXXXXXXXXXXX (XXXXXX).

¹ Prior to enactment of the law, the provision of educational services was the responsibility of the DJS staff.

Therefore, the MSDE, JSEP is the public agency that is responsible for ensuring that students with disabilities who are placed in these facilities receive a Free Appropriate Public Education (FAPE) consistent with the requirements of the Individuals with Disabilities Education Act (IDEA) (Doc. d).

**ALLEGATION #1: EDUCATIONAL PROGRAM THAT MEETS
STATE STANDARDS**

FINDINGS OF FACTS:

1. The MSDE, JSEP has established a written calendar that states the specific days and total number of days for the implementation of the educational program at all of the DJS facilities. The calendar for the current school year reflects that there are 223 instructional days, fourteen (14) professional development days, and eight (8) record keeping days (Doc. a).
2. The weekly schedules for the Juvenile Services Education Programs reflect the beginning and end of the six (6) hour school day and the specific time periods during the school day when the areas of instruction are implemented at each DJS facility (Doc. b).
3. A monthly report of the results of the Basic Achievement Skills Inventory (BASIS) that is administered to students and a review of student educational records reflects that students' achievement in reading and math are assessed upon enrollment and 30 days after enrollment in the Juvenile Services Educational Programs (Review of a monthly report of the results of the Basic Achievement Skills Inventory (BASIS) that is administered to students and review of students' educational records).

DISCUSSION/CONCLUSIONS:

The IDEA requires that each educational program for students with disabilities meet the educational standards of the State Education Agency (34 CFR §300.149).

In order to implement the State law mandating the development and implementation of educational programs in the DJS residential facilities, regulations were promulgated requiring the MSDE, JSEP to provide a comprehensive education program for youth in these facilities (COMAR 13A.05.11). The State law established a Coordinating Council for Juvenile Services Educational Programs within the MSDE with the responsibility for developing, recommending, and approving an educational program for each residential facility to meet the special needs and circumstances of the students in the DJS residential facilities. It also required that the Council adopt regulations consistent with State law for the conduct and management of the educational programs. The Council must review the effectiveness of the program of educational instruction used in the DJS residential facilities on a regular basis in order to ensure that the unique educational needs of the students are being satisfactorily met (Ann. Code of Md. Ed. Art. §§22-305 and 306).

The regulations that were developed require the educational program in each DJS facility to operate at least 220 school days and a minimum of 1,320 school hours during a 12-month period. Each educational program must have a written calendar that states the specific days and total number of days for the implementation of the program, a written schedule that states the beginning and end of the 6-hour school day, and the specific time periods during the school day when the areas of instruction are implemented (COMAR 13A.05.11.04).

Student academic achievement must be formally assessed upon intake into each educational program to determine appropriate instructional placement, and then again after 30 days of enrollment to determine academic gains in reading and math. Certificates of achievement are to be awarded to students based on demonstrated gains (COMAR 13A.05.11.05).

Based on the Findings of Facts #1 and #2, the MSDE finds that a written school year calendar and schedule that specifies the beginning and end of the school day and schedule of courses provided has been developed, which reflect that the educational programs are in operation for the amount of time required. Based on the Finding of Fact #3, the MSDE further finds that there is documentation that achievement in reading and math is assessed upon enrollment and 30 days after enrollment in the Juvenile Services Educational Programs. Therefore, this office does not find that a violation with respect to the allegation.

**ALLEGATIONS #2 AND #3: ACCESS TO INSTRUCTION TO ENABLE STUDENTS
TO MAKE PROGRESS IN THE GENERAL
CURRICULUM**

AND

PARTICIPATION IN ASSESSMENTS

FINDINGS OF FACTS:

Access to Instruction

4. The weekly schedules for the Juvenile Services Education Programs reflect that since January 1, 2014, all of the programs have instructional periods for English, math, science, and social studies. However, prior to January 1, 2014, some of the programs did not have instructional periods for all of these courses (Docs. b and f).
5. The MSDE, JSEP staff report that when the public agency assumed responsibility for the provision of education services in the DJS facilities, it found that, because core courses in areas such as math were taught in classes that often included students in grades nine (9) through twelve (12), it could not guarantee that the students in any specific level class would get instruction in all of their required objectives. Therefore, in addition to requiring that instruction be provided on higher level concepts, the MSDE, JSEP required that courses such as algebra and geometry be re-titled as “math” with the grade level of instruction being provided (Interview with the MSDE, JSEP staff and review of students’ educational records).

6. The educational record for Student XXX reflects that he began receiving instruction in a course entitled Geometry in May 17, 2013 while at XXXXXXXX, but that this course was re-titled to Math 12 when the MSDE, JSEP began assuming responsibility for the educational instruction at that facility (Review of the student's educational record).
7. The educational record for Student XXX also reflects that while he was taking a course entitled Government at XXXXXXXX, this course was not continued when the MSDE, JSEP assumed responsibility for the educational programming at the facility. The MSDE, JSEP staff report that this was due to the lack of a teacher who was certified to teach in that area (Review of the student's educational record).
8. Student XXX who was placed at the XXXXXXXX from May 2013 to November 2013, entered the facility with an IEP that required the provision of 1.5 hours per week of special education instruction in social studies. The IEP was revised to discontinue this service due to the lack of availability of instruction in this area at the facility. Instead, the student was provided with "independent study" in this area. However, there is documentation that the student did not successfully complete the class work (Review of the student's educational record).
9. While the complainant alleges that Student XXX was unable to take a core course while placed at XXXXXXXX because instruction in a foreign language was not offered, there is documentation that the student took courses in carpentry and career development at XXXXXXXX (Doc. c and review of the student's educational record).
10. While the complainant alleges that Student XXX was unable to continue taking his science and social studies courses when he transferred from the BCJJC to the XXXXXXXXXXXX because of the unavailability of those courses at the XXXXXXXXXXXX, the documentation of the courses taken at the BCJJC does not reflect his having taken science or social studies at the BCJJC (Doc. c and review of the student's educational record).
11. While the complainant alleges that Student XXX was only able to earn credits in two (2) core courses while placed at the XXXXXXXXXXXX from April 18, 2013 to October 24, 2013, the student's educational record reflects that he earned credits in English, Algebra, Geometry, and Technology Education during this time period (Doc. c and review of the student's educational record).

Participation in Statewide Assessments

12. The MSDE, JSEP Instructional Program Calendar from July 2013 through July 2014 documents that the school staff are provided with the schedule for the administration of the State-wide assessments. A review of samples of 2013 HSA testing documents indicates that the Juvenile Services Education Programs track student information to ensure that those who qualify are offered participation in the High School Assessments.

These documents include student sign-in sheets for those who have participated in assessments, forms signed by students who chose not to participate in the administration of an assessment, checklists completed by the school staff for the receipt of High School Assessment testing materials, forms used by the school staff for tracking student participation in assessments, and school staff sign-in sheets and certificates of training on the administration of assessments (Doc. a and review of 2013 HSA testing documents).

13. Student XXX, who was placed at the XXXXXXXXXX, began taking Algebra at the facility in April 2013, but did not complete the course by the time that the Algebra HSA was administered in May 2013. Although the student earned credit for Algebra while at the XXXXXXXXXX, the Algebra HSA was not administered again during the time period that the student remained at the facility. Therefore, he was unable to take the HSA while placed at the facility (Review of the student's educational record and the MSDE schedule of the administration of the Algebra HSA).
14. Student XXX, who was placed at XXXXXXXXX, also earned credits in Algebra, but did not participate in the Algebra HSA because the test was not administered while the student was placed at the facility from January 22, 2013 through March 19, 2013 (Review of the student's educational record and the MSDE schedule of the administration of the Algebra HSA).

DISCUSSION/CONCLUSIONS:

Allegation #2 Access to Instruction

The IDEA requires that a Free Appropriate Public Education (FAPE) be provided to students with disabilities through an IEP that meets the needs that result from the disability and enable them to be involved in and make progress in the general curriculum (34 CFR §§300.101, .103, .320, and .323).

The MSDE, JSEP 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 standards for graduation from a public high school in Maryland and prepare students to successfully obtain a Maryland High School Diploma by examination (COMAR 13A.05.11.03).

To be awarded a Maryland High School Diploma, a student must have earned a minimum of 21 credits, including core credits in English, fine arts, mathematics, physical education, science, social studies, and technology education. Core credits must also be earned in world language or American Sign Language, advanced technology education, or a career and technology program (COMAR 13A.03.02.04).

The complainant alleges that instruction in all of the core courses is not available within each DJS facility. The complainant asserts that, as a result, some students are provided with instruction in courses for which they have already earned the required credit and are not able to receive instruction in those core courses for which they need to earn credit. The complainant

also alleges that since students do not have access to instruction in the same core courses in each DJS facility, students who are transferred to different facilities are not always able to complete credit requirements that they began earning in one facility when they are moved to another facility. The complainant asserts that this impedes the ability of students to make progress in the general curriculum (Doc. c).

Based on the Findings of Facts #4 - #11, this office finds that the MSDE, JSEP has not consistently ensured that students in all of the MSDE Juvenile Services Education Programs have had access to courses to enable them to make progress in the general curriculum prior to January 1, 2014. Therefore, this office finds a violation with respect to this allegation.

Allegation #3 Participation in Statewide Assessments

The IDEA requires that students with disabilities be included in all general State and district-wide assessments with appropriate accommodations and alternate assessments, if necessary, as indicated in their respective IEPs (34 CFR §300.160).

In addition to earning the required core credits in order to receive a Maryland High School Diploma, students must receive a passing score on the Maryland High School Assessments for algebra/data analysis, biology, English, and government (COMAR 13A.03.02.09). The public agency must provide appropriate assistance to strengthen areas of weaknesses for students who have not achieved satisfactory scores on the Maryland High School Assessments. Each student who fails a Maryland High School Assessment must be provided the opportunity to retake the appropriate assessment in accordance with the testing schedule that is issued by the MSDE (COMAR 13A.03.02.07).

In this case, the complainant alleges that students completed core courses but were not provided with the ability to participate in the High School Assessments in those areas following completion of the courses (Doc. c). Based on the Findings of Facts #13 and #14, this office finds that there is no documentation to support the allegation.

Based on the Finding of Fact #12, this office finds that there is documentation of a procedure for determining when students are to be provided with the opportunity to participate in the High School Assessments and documentation of student participation in those assessments while participating in the Juvenile Services Educational Programs. Therefore, this office does not find a violation with respect to this allegation.

ALLEGATION #4: IEP REVIEW/REVISION

FINDINGS OF FACTS:

Student XXXX

Student XXX., who was placed at the XXXXXXXX from May 2013 to November 2013, entered the facility with an IEP that required the provision of 1.5 hours per week of special education

instruction in social studies. The IEP was revised to discontinue this service due to the lack of availability of instruction in this area at the facility. Instead, the student was provided with “independent study” in this area. However, there is documentation that the student did not successfully complete the class (Review of the student’s educational record).

Student XXXX

15. Student XXX, who was placed at the XXXXXXXXXXXX in April 2013, entered the facility with an IEP that required the provision of an electronic word processor and response and spelling devices in order to assist him in achieving an annual goal for him to develop organized responses with the use of assistive technology. The IEP also required that special education and related services be provided in a separate special education classroom (Review of the student’s educational record).
16. Student XXXX IEP was revised at a June 12, 2013 IEP team meeting, in which the IEP team continued the annual goal to develop organized responses with the use of assistive technology, but decided that the assistive technology devices would no longer be required. The IEP team also decided that the amount of special education instruction would be decreased and that it would be provided in the general education classroom instead of the separate special education classroom. The IEP team documented that the basis for its decisions was that the student had been successful without the provision of assistive technology and with special education instruction in the general education classroom since being placed at the XXXXXXXXXXXX (Review of the student’s educational record).

DISCUSSION/CONCLUSIONS:

In order to provide a student with a FAPE, the public agency must ensure that at the beginning of each school year, the student has an IEP. The IEP must include a statement of the student’s present levels of academic and functional performance, including how the disability affects the student’s progress in the general curriculum, which is based on the evaluation data. Information about the student’s present levels of performance is obtained through the evaluation data, which includes assessment results, information from the student’s teachers, and the parent’s concerns (34 CFR §§300.101, .320, and .323).

The IEP must also include measurable annual goals designed to meet the needs that arise out of the student’s disability based on the present levels of performance. In addition, the IEP must include a statement of the special education instruction and related services required to assist the student in achieving the goals, and the educational placement in which the special education services are to be provided (34 CFR §§300.101, .320, and .323).

The public agency must also ensure that the educational placement is made by the IEP team and is based on the IEP. The educational placement may not be based solely on the factors such as the configuration of the service delivery system, availability of staff, or administrative convenience, and the public agency must ensure that a student is not removed from age-appropriate regular

Grace Reusing, Esq.
Ms. S. Beth Hart
January 3, 2014
Page 10

classrooms solely because of needed modifications in the general education curriculum (34 CFR §300.116, COMAR 13A.05.01.10, and *Letter to Clay*, United States Department of Education, Office of Special Education Programs, 23 IDELR 341, May 17, 1995).

In determining a student's educational placement, the public agency must ensure that the IEP team makes the determination based on the IEP and that the student is placed in the Least Restrictive Environment in which the IEP can be successfully implemented (34 CFR §300.116). This means that, to the maximum extent appropriate, students with disabilities, including students in public or private institutions or other care facilities, must be educated with students who are not disabled. Removal of students from the regular education environment may only occur if the nature or severity of the student's disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily (34 CFR §300.114).

If a student with an IEP transfers to a new public agency within the 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 revises the IEP (34 CFR §300.323). "Comparable services" is defined as services that are similar or equivalent to those that are described in the IEP from the previous public agency, as determined by the IEP team in the new public agency [emphasis added] (Analysis of Comments and Changes to the IDEA, *Federal Register*, Vol. 71, No. 156, p. 46681, August 14, 2006).

Meeting these requirements for students in secured, non-educational facilities poses significant challenges. It is the task of the MSDE, JSEP to address these challenges in order to ensure the implementation of the IDEA requirements in the DJS facilities (COMAR 13A.05.11.03 and .06).

The complainant alleges that IEPs are being revised upon student placement within the DJS facilities based upon the service delivery system available at each respective facility and not based on the needs of the individual students, as identified in the present levels of performance (Doc. c). Based on the Findings of Facts #15-#17, this office finds that there is documentation that student IEPs have not consistently been revised based upon each student's needs as identified in the present levels of performance.

Based on the Findings of Facts #16 and #17, this office further finds that there is documentation that students who are placed in the DJS facilities have not consistently been provided with services that are similar or equivalent to those that are described in the IEP from the previous public agency. Therefore, this office finds violations with respect to this allegation.

**ALLEGATION #5: MAINTENANCE AND TRANSFER OF
STUDENT EDUCATIONAL RECORDS**

FINDINGS OF FACTS:

17. When a student transfers to another school, the MSDE, JSEP transmits a State-wide form to the new school, known as the Student Record System Card 7, or "SR 7," which contains information that is used by the receiving school to determine initial placement of

a student prior to receipt of the official record. A review of student educational records reflects that while the titles of courses taken by students is maintained in the educational record, this information has not been consistently placed on the SR 7 that is transmitted to a receiving school (Review of students' educational records).

18. The educational record for Student C.C., who was placed at the XXXX from August 15, 2013 to September 19, 2013, reflected that he was taking Math 9 and English 9 at the WMCC despite the fact that he had previously earned credit for 9th grade Math and English. The MSDE, JSEP reports that this was a typographical error and should read that he received instruction in Math 10 and English 10. The MSDE, JSEP further report that the error was likely due to the fact that the student is considered to be a 9th grader, and that the error has been corrected (Doc. e and review of the student's educational record).
19. The educational record for Student XXX contained inconsistent information about the number of credits earned by the student while he was placed at XXXXXXXX. It also contained a typographical error that reflected that the student was placed at XXXXXXXX from November 2, 2013 to April 2, 2013. The MSDE, JSEP staff report that this information has been corrected (Doc. e and review of the student's educational record).
20. The educational record for Student XXXXX who was placed at the XXXXXXXXXXXXX from March 14, 2013 to August 8, 2013, did not accurately reflect the total number of credits earned by the student during his placement. The MSDE, JSEP staff report that this information has been corrected (Doc. e and review of the student's educational record).

DISCUSSION/CONCLUSIONS:

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).

In order to ensure proper student records management, the local public agencies in the State are required to maintain educational records consistent with the Maryland Student Records System Manual (COMAR 13A.08.02.01 and .02). The MSDE, JSEP must have policies and procedures in place to obtain, maintain, and share student records consistent with this requirement (COMAR 13A.05.11.09).

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 an SR 7. The SR 7 includes information about the courses in which the student was enrolled, including course titles for students in secondary school. The sending school must also share with the receiving school documentation of the credits earned by each student, which is to be recorded on the SR 2 (*Maryland Student Records System Manual*, 2011).

As indicated above, if a student with an IEP transfers to a new public agency within the 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 revises the IEP (34 CFR §300.323). In order to ensure the provision of appropriate services to a transferring student, the new public agency must take reasonable steps to promptly obtain the student's educational record, including the IEP and supporting documents and any other records relating to the provision of special education or related services to the student, from the previous public agency in which the student was enrolled (34 CFR §300.323).

The complainant alleges that the MSDE, JSEP is not appropriately transmitting student transcripts that include required information needed in order for students to receive credit from their local school systems for the courses they complete, including the specific course titles and the number of credits earned in each subject (Doc. c). Based on the Findings of Facts #18-#21, this office finds that there is documentation that the MSDE, JSEP has not consistently ensured that accurate information has been transmitted to new public agencies when students transfer from the educational programs at the DJS facilities. Therefore, this office finds a violation with respect to this allegation.

**ALLEGATION #6 PROVISION OF SPECIAL EDUCATION IN ENGLISH AND
MATH
BY QUALIFIED TEACHERS**

FINDINGS OF FACTS:

21. A review of the list of staffing at the Juvenile Services Education Programs reflects that only four (4) of the programs have both math and English teachers who hold valid certificates in their areas of instruction. Six (6) of the programs have neither math nor English teachers who hold valid certificates in their areas of instruction (Review of staffing at the Juvenile Services Education Programs).

DISCUSSION/CONCLUSIONS:

The IDEA requires that the State Education Agency establish and maintain qualifications to ensure that personnel necessary to carry out the requirements of the IDEA are appropriately and adequately prepared and trained, including those personnel who have the content knowledge and skills to serve students with disabilities. These qualifications must be designed to ensure that highly qualified personnel provide special education and related services to students with disabilities. However, this requirement does not create a right of action on behalf of an individual student or class of students for the lack of the provision of instruction by an individual who is not highly qualified (34 CFR §§300.18, .101, .156, .323).

The MSDE, JSEP is required to ensure that instruction is provided by personnel with valid Maryland Educator Certificates (COMAR 13A.05.11.07). The complainant alleges that the MSDE, JSEP does not ensure that instruction is provided in math and English by personnel who hold valid Maryland Educator Certificates in the areas in which they provide instruction (Doc. c).

Based on the Finding of Fact #22, this office finds that there is no documentation that all of the math and English teachers assigned to each Juvenile Services Educational Program hold certificates in the areas in which they provide instruction, as required. Therefore, this office finds a violation with respect to this allegation. Notwithstanding the violation, because the requirement does not create an individual right to receive instruction from highly qualified personnel, no student-specific corrective action is required.

CORRECTIVE ACTIONS/TIMELINES:

Student-Based – Named Students

The MSDE requires the MSDE, JSEP to provide documentation by March 1, 2014 that it has made attempts to locate the named students who were the subject of this State complaint, and if they are enrolled in the MSDE, JSEP or an educational program operated by any other public education agency, steps have been taken to ensure that an IEP team is convened. At each IEP team meeting, the MSDE, JSEP must ensure that the IEP teams review and revise, as appropriate, each student's IEP, to ensure that it addresses the student's identified needs, and to determine whether the violations identified through this investigation had a negative impact on the student's ability to benefit from the educational program.

If the IEP team determines that there was a negative impact, the MSDE, JSEP must also document that it has offered the student *compensatory services*² or another remedy to redress the violations identified during this investigation. If the student is enrolled in another public education agency, the documentation must reflect that the remedy was developed after consultation and in collaboration with that public agency.

The MSDE also requires the MSDE, JSEP to provide documentation by March 1, 2014 that each student's educational record accurately documents the title of classes taken and the credits received at the Juvenile Services Education Programs in which the student has received instruction.

Student-Based – All Students Enrolled in the MSDE Juvenile Services Educational Programs During the 2013-2014 School Year

The MSDE requires the MSDE, JSEP to provide documentation by the start of the 2014-2015 school year that the educational records for all students participating in the MSDE Juvenile Services Educational Programs during the 2013-2014 school year have been reviewed for compliance with the requirements addressed in this investigation. For each student for which a violation is identified in the areas listed below, the MSDE, JSEP must provide documentation of the following:

1. That each student's educational record accurately documents the title of classes taken and the credits received;

² 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).

2. That for each student whose IEP was revised upon entry into an MSDE Juvenile Services Educational Program without documentation of a basis for revision related to the student's needs, an IEP team reviews and revises, as appropriate, the IEP to ensure that it is based on the student's needs. The team must also determine whether the violation negatively impacted the student's ability to benefit from the educational program, and if so, determines the *compensatory services*¹ or another remedy to redress the violation; and
3. That for each student who was unable to complete a core course as a result of the unavailability of the course, an IEP team determines whether the violation negatively impacted the student's ability to benefit from the educational program, and if so, determines the *compensatory services*¹ or another remedy to redress the violation.

The MSDE, JSEP must ensure that the parents of each student are provided with proper written notice of the determinations made at each IEP team meeting, including a written explanation of the basis for the determinations, as required by 34 CFR §300.503. If the parents disagree with the IEP team's determinations, they maintain the right to request mediation or file a due process complaint, in accordance with the IDEA.

System-Based

The MSDE requires the MSDE, JSEP to provide documentation by the start of the 2014-2015 school year that all math and English teachers in each MSDE Juvenile Services Education Program are highly qualified.

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

TECHNICAL ASSISTANCE:

Technical assistance is available to the parties through Mrs. Martha J. Arthur, Education Program Specialist, MSDE. Mrs. Arthur may be contacted at (410) 767-0255.

Please be advised that the complainant and the MSDE, JSEP 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 school system must implement any corrective actions consistent with the timeline requirements as reported in this Letter of Findings.

Grace Reusing, Esq.
Ms. S. Beth Hart
January 3, 2014
Page 15

Questions regarding the findings of facts, conclusions, and corrective actions contained in this letter should be addressed to this office in writing. The students' parents and the MSDE, JSEP 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 for the students, 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

cc: Dr. Lillian M. Lowery
Ms. Katharine M. Oliver
Ms. Anna Lisa Nelson
Mr. Samuel Kratz
XXXXXX
XXXXXX
XXXXXX
XXXXXX
XXXXXX
XXXXXX
XXXXXX
XXXXXX
Ms. Dori Wilson
Mrs. Martha J. Arthur