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State Superintendent of Schools

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June 10, 2014

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

RE: XXXXX
Reference: #14-082

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 the investigation.

ALLEGATION:

On April 11, 2014, 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 Program (MSDE, JSEP) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to the above-referenced student.

The MSDE investigated the allegation that the MSDE, JSEP has not ensured that a copy of the student’s Individualized Education Program (IEP) has been obtained and implemented since the student has been placed at the XXXXXXXXXXXXX, in accordance with 34 CFR §§300.323 and .612, COMAR 13A.08.02.28, and *The Maryland Student Records System Manual*.

INVESTIGATIVE PROCEDURES:

1. Ms. Tyra Williams, Education Program Specialist, MSDE, was assigned to investigate the complaint.
2. On April 14, 2014, the MSDE provided the MSDE, JSEP with a copy of the written complaint.
3. On April 15 and 17, 2014, May 28, 2014, and June 3, 2014, the MSDE, JSEP sent the MSDE electronic mail correspondence with information to consider during this complaint investigation.
4. On April 23, 2014, May 5 and 13, 2014, and June 3 and 5, 2014, Ms. Williams conducted telephone interviews with the complainant regarding the allegation.
5. On April 23, 2014 and May 30, 2014, the complainant provided the MSDE with information to consider during this complaint investigation.
6. On April 23, 2014, the MSDE sent correspondence to the complainant that acknowledged receipt of the complaint and identified the allegation subject to this investigation. On the same date, the MSDE notified Ms. Katharine Oliver, Assistant State Superintendent, Division of Career and College Readiness, Maryland State Department of Education; and Ms. Beth Hart, Director, Juvenile Services Education Program, MSDE, of the allegation and requested that the MSDE, JSEP review the alleged violation.
7. On May 16, 22, and 30, 2014, the MSDE requested information from the MSDE, JSEP for consideration during the investigation.
8. On May 22 and 30, 2014, Ms. Williams met with Mr. Samuel Kratz, Special Education Coordinator, MSDE, JSEP at the MSDE to discuss the allegation.
9. On June 3 and 4, 2014, Ms. Williams conducted telephone interviews with the student's mother.
10. On June 3 and 6, 2014, Williams conducted a telephone interview with the Anne Arundel County Public Schools system staff.
11. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
 - a. Correspondence and attachments from the complainant to the MSDE, received on April 11, 2014;

- b. MSDE, JSEP Special Education Policies and Procedures Manual, dated July 1, 2010;
- c. The student's IEP with documentation of the student's progress towards the IEP goals, dated June 6, 2013;
- d. Excerpts from the student's enrollment and exit data maintained by the MSDE, JSEP, from January 13, 2014 through April 25, 2014;
- e. Documentation of an interview with the student, conducted by the XXXXXX XXXXXXXXXX school staff on January 30, 2014;
- f. The electronic data entry record of the student's intake information for entry into the XXXXXXXXXXXXXXXXXXXX, printed January 30, 2014;
- g. Communication log maintained by the XXXXXXXXXXXXXXXXXXXX school staff, which documents that a facsimile was sent for educational records to XXXXXXXXXXXX Middle School on January 30, 2014;
- h. Excerpts from the MSDE, JSEP's log of the student's placement at the XXXXXX XXXXXXXXXXXXXXXXXXXX and requests for the educational record, dated January 30, 2014 through April 25, 2014;
- i. Excerpts from the record of access to the student's special education record, dated from January 30, 2014 through May 8, 2014;
- j. Excerpts from the communication log maintained by the XXXXXXXXXXXXX XXXXXXXX school staff, dated January 30, 2014 through May 8, 2014;
- k. Documentation of the review of the student's IEP, completed by the XXXXX XXXXXXXXXXXXXXX school staff, dated January 31, 2014;
- l. IEP team meeting invitation, dated February 4, 2014;
- m. Documentation of the provision of counseling, as a related service, dated from February 6, 2014 through April 17, 2014;
- n. Written meeting notes of the IEP team's decisions, dated February 27, 2014;
- o. Report of the parent concerns at the IEP team meeting on February 27, 2014;
- p. The student's IEP with documentation of progress towards the student's goals, dated February 27, 2014; and
- q. The student's work samples, demonstrating the type of skills he worked on while attending the MSDE, JSEP education program at the XXXXXXXXXXXX.

BACKGROUND:

Student History

The student is sixteen (16) years old and identified as a student with an Other Health Impairment under the IDEA, based on a diagnosis of Attention Deficit Hyperactivity Disorder. He has an IEP that requires special education instruction and related services. The student was committed to the custody of the Maryland Department of Juvenile Services (DJS) from January 30, 2014 through April 25, 2014 and placed at the XXXXXXXXXXXXXXXXXXXX (XXXXXXX XXXXXX). (Doc. p).

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Prior to his placement at the XXXXXXXXXXXX, the student was residentially placed by the DJS in a group home operated by the XXXXXX XXXXX in Baltimore County, Maryland. At that time, the student attended the XXXXXXXXXXXX, a nonpublic separate special education school where he had been placed by the Anne Arundel County Public Schools (AACPS) (Interviews with the complainant, MSDE, JSEP staff, and AACPS school system staff).

From January 30, 2014 through April 25, 2014, the DJS placed the student at the XXXXXXXX XXXXX, where he began attending the MSDE, JSEP education program located on the grounds of the XXXXXXXXXXXX. On April 25, 2014, the student was returned to his mother's care in Anne Arundel County, Maryland (Docs. d, f, h, i, and j, and interview with the student's mother).

From April 26, 2014 through May 11, 2014, the student was not enrolled in school and did not receive special education instruction and counseling services (Interview with the student's mother).

On May 12, 2014, the student began attending the XXXXXXXXXXXX, an Anne Arundel County Public School (Interview with the complainant and the student's mother).

Outcome of Recent MSDE, JSEP State Complaint Investigations

On January 3, 2014, this office issued a Letter of Findings, as a result of a previous State complaint investigation (#14-039) regarding all students identified with disabilities under the IDEA who are participating in the education programs operated by the MSDE, JSEP. As reported in that Letter of Findings, the MSDE found violations of provisions of the IDEA with respect to students with disabilities placed in the fourteen (14) DJS facilities across the State and required corrective action to address the violations.

As a result of those determinations, the MSDE has required the public agency to document, by the start of the 2014-2015 school year, that it has reviewed the educational records of students who participated in the education programs operated by the MSDE, JSEP during the 2013-2014 school year. For each student identified who has not received special education and related services in accordance with the IDEA and related State requirements, the MSDE, JSEP must take corrective action for the violation.

However, this investigation did not specifically address allegations related to the lack of IEP implementation as a result of not obtaining the student's educational records from sending schools, as alleged in this complaint. Therefore, a separate investigation was initiated in this matter related to whether school staff at the XXXXXXXXXXXX are taking appropriate steps to obtain student educational records in order to implement the IEP.

FINDINGS OF FACTS:

Obtaining the Educational Record

1. The MSDE, JSEP has developed procedures for obtaining a student's educational record that requires staff make a request for a student's educational record from the student's last known school of enrollment within forty-eight (48) hours of receiving notice of the student's entry into a DJS facility. The procedures also require that the MSDE, JSEP staff maintain contact logs of requests for the educational record, make "at least three (3) diligent attempts within five (5) days" to acquire each student's educational record, and maintain a tracking system to monitor the receipt of the educational record for each student that is documented on a Communication/Action Log. The MSDE, JSEP also requires that school staff "maintain a follow-up system to track the record acquisition activity until satisfactory record receipt is accomplished for each student" (Doc. b).
2. The MSDE, JSEP staff report that when students enroll in an educational program, the school staff request the student's educational record from the last known school of enrollment and at the same time, request a copy of the IEP from the MSDE, JSEP, who are able to obtain documents that are maintained on the MSDE IEP online system (Interview with MSDE, JSEP staff).
3. On January 30, 2014, the DJS placed the student at the XXXXXXXXXXXX. There is documentation that on the same date, the MSDE, JSEP staff provided the XXXXX XXXXXX school staff with a copy of the student's June 6, 2013 IEP that was in place at the XXXXXXXXXXX (XXXXXXXX), the nonpublic separate special education school in which the student was placed by the AACPS prior to his placement at the XXXXXXXX XXXXX. Also, the XXXXXXXXXXXX school staff requested a copy of the student's educational record from XXXXXXXXXXXXXXXXXXXX, the AACPS middle school the student would have attended if he were not disabled (Docs. d, e, f and Response from MSDE, JSEP staff).
4. There is no documentation that the XXXXXXXXXXXX school staff made a request to XXXXXXX, the student's last known school of enrollment, for the educational record (Review of the educational record).
5. There is no documentation that the XXXXXXXXXXXXXXXXXXXX school staff successfully acquired the student's educational record or made additional attempts to do so (Docs. i and j and review of the educational record).
6. A review of the educational records of students currently enrolled at that the XXXXX XXXXXXX reflects that educational records are not consistently obtained from sending

schools and that special educational services are being consistently provided in accordance with the students' IEPs (Review of educational records).

IEP Implementation

7. On January 31, 2014, the XXXXXXXXXXXX school staff determined that they could not adopt the student's June 6, 2013 IEP, which required special education instruction, counseling services, and a behavioral intervention program, to be provided in a nonpublic separate special education school. The IEP team documented that according to the IEP, the student required a highly-structured and therapeutic school environment with low student-to-teacher ratio (Docs. c, k, and, l and review of the educational record).
8. On February 27, 2014, the IEP team convened to review and revise the student's June 6, 2013 IEP. The IEP team decided that the IEP could be implemented in a general education classroom where instruction "[would] be provided within a small class (no more than 10 students) with a low student/teacher ratio" (Docs. n and p).
9. The IEP team decided that the basis for the decision was that the student "[was] making sufficient progress towards achieving his annual goals" with the supports of the school-wide behavior intervention program. However, reports of the student's progress that were made on February 7, 2014 state that the student's annual IEP goals had not been introduced (Docs. c and n).
10. At the IEP team meeting, the student's mother expressed her belief that assessments should be conducted before deciding that services could be provided in a general education setting. In response to her concerns, the IEP team decided that the XXXXX XXXXXX school staff would contact the student's mother within "the next few weeks to begin the process of reevaluation for [the student]." However, there is no documentation that an IEP team meeting has been scheduled to begin the process of the reevaluation, in accordance with the February 27, 2014 IEP team decision (Docs. n and o, and review of the educational record).
11. There is documentation that on February 27, 2014, the student began receiving counseling, as a related service, to address the IEP goals for the student to improve his social emotional functioning (Doc. m).
12. There is documentation that the student has worked on the skills that are covered in the academic goals, but there is no documentation that the skills have been addressed in the manner described in the goals. For example, there is documentation that the student has worked on spelling and the use of descriptive vocabulary. However, there is no documentation the student has been "using the prewriting, drafting, revising, and editing strategies of effective writers and speakers," as the written language goal indicates,

despite the fact that an April 17, 2014 progress report on the goal states that the student “needs to develop a better understanding of the writing process” (Doc. p).

13. On April 25, 2014, the student was placed with his mother in Anne Arundel County. There is no documentation that the DJS took steps to enroll the student in school upon his placement back in the community (Doc. d and interview with the complainant, the student’s mother, and the AACPS school system staff).

DISCUSSION/CONCLUSIONS:

In order to ensure the provision of a Free Appropriate Public Education (FAPE) to students with disabilities, each public agency is required to make sure that they are provided with the special education and related services required by their IEPs (34 CFR §§300.101 and .103). The term “public agency” is defined as a State Education Agency, local school system, and any other political subdivisions of the State that are responsible for providing education to students with disabilities (COMAR 13A.05.01.02).

Maryland requires each local school system to ensure the provision of a FAPE to students with disabilities residing within the jurisdiction of the local school system (COMAR 13A.05.02.13). The MSDE, JSEP is the public agency in the State of Maryland with the responsibility to ensure the provision of a FAPE to students who are residing in the DJS facilities (Md. Code Ann., Educ. §22-303 and COMAR 13A.05.01.03).

In order to guarantee that students in State-supervised care,¹ are provided with a FAPE, within two (2) school days after receiving notice of enrollment of a student in State supervised care, the receiving school must inform the sending school of the enrollment and request, in writing, the educational record of the student from the sending school. Within three (3) days of receiving such notice, the sending school must, among other things, send a copy of the student’s education record to the receiving school (Md. Code Ann., Educ. §8-504 and COMAR 13A.08.07.03).

In order to provide 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).

All student educational records are to be maintained in accordance with the Family Educational Rights and Privacy Act (34 CFR §§300.610 - .627). In order to maintain proper student records management, the states are required to develop policies and procedures regarding the retention of

¹ A student in State-supervised care is a child who is in the custody of, committed to, or otherwise placed by a placement agency. A placement agency includes local Departments of Social Services and the Maryland Department of Juvenile Services (Md. Code Ann., Educ. §8-501).

records (34 CFR §300.612). Local public agencies in Maryland are required to maintain educational records consistent with the Maryland Student Records System Manual (COMAR 13A.08.02.01 and .02).

Obtaining the Educational Record

Based on the Findings of Facts #1-#5, the MSDE finds that there is no documentation of the MSDE, JSEP's attempts to obtain the educational record from the last known school of enrollment and receipt of the student's educational record. Therefore, this office finds that a violation occurred with respect to this aspect of the allegation.

IEP Implementation

Based on the Findings of Facts #7, #8, #12, and #13, there is no documentation that the student has been provided with the special education instruction required by the IEP, while he was placed at the Backbone Mountain, from January 30, 2014 through April 25, 2014. Based on the Findings of Facts #7 and #11, the MSDE finds that there is no documentation of the provision of counseling services from January 30, 2014 to February 27, 2014. Therefore, this office finds a violation occurred with respect to this aspect of the violation.

Based on the Finding of Fact #6, the MSDE finds that there is no documentation that the Backbone Mountain school staff have ensured that the educational records of currently enrolled students are consistently obtained. Further based on the same Finding of Fact, the MSDE finds that there is no documentation that the educational services are consistently being provided in accordance with the students' IEPs. Therefore, this office finds that a violation has occurred.

ADDITIONAL VIOLATIONS:

Review and Revision of the IEP

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 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, 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).

The United States Department of Education, Office of Special Education Programs (OSEP), requires that, during the investigation of an allegation that an IEP team did not follow proper procedures under the IDEA, the State Education Agency must review the procedures used by a school system to reach the determinations made. Additionally, the State Educational Agency must review the evaluative data to determine if decisions made by the IEP team are consistent with the data (OSEP Letter #00-20, July 17, 2000 and *Analysis of Comments and Changes to IDEA*, Federal Register, Vol. 71, No. 156, p 46601, August 14, 2006).

Based on the Finding of Fact #9, the IEP team's decision about the student's educational placement is inconsistent with the data that the team documented that is used as the basis for the decision. Therefore, this office finds a violation occurred with respect to the placement decision.

Notwithstanding the violation, the corrective action of a previous State complaint investigation (#14-039) requires that for each student whose IEP was revised without documentation upon entry into a MSDE Juvenile Services Education Program during the 2013-2014 school year, an IEP team reviews and revises, as appropriate, the IEP to ensure that it is based on the student's needs. The IEP team must also determine whether the violation negatively impacted the student's ability to benefit from the educational program, and if so, determine the compensatory services or another remedy to redress the violation. Therefore, the MSDE does not require additional corrective action with regard to this violation.

Reevaluation Procedures

A public agency must ensure that a reevaluation of a student with a disability is conducted at least once every three (3) years, unless the parent and the public agency agree that a reevaluation is unnecessary, and not more than once a year, unless the parent and the public agency agree (34 CFR §300.303 and COMAR 13A.05.01.06). Based on the Finding of Fact #10, the MSDE finds that the parent and the school staff agreed that a reevaluation was required, but that the MSDE, JSEP did not ensure that a reevaluation was begun consistent with the decision made by the IEP team on February 27, 2014. Therefore, this office finds that a violation occurred.

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. Code Ann. Cts. & Jud. Proc. §§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 purposes of a commitment to the local department of social services or the DJS includes to secure for the child custody, care, and discipline as nearly as possible equivalent to that which the child's parents should have given (Md. Code Ann. Cts. & Jud. Proc. §§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.

On its website, the DJS states that as part of a youth's after-care plan, the DJS case managers create "transition plans" to assist youth returning to the community with transitioning back to their local community school. The website further states that the "transition plan" is developed in collaboration with local school system officials and teachers and focuses on ways to bring a youth back into the educational environment with as little disruption as possible. Once a youth returns to the community and is re-enrolled in school, the DJS case managers reportedly track the youth's attendance and progress at the school through the Spotlight on Schools Program (<http://www.djs.state.md.us/education-jobs.asp>).

Based on the Finding of Fact #13, the MSDE finds that there is no documentation that the DJS developed and implemented a transition plan for the student upon his return to the community on April 25, 2014 in order to ensure that he was appropriately enrolled in school, consistent with the State law and the DJS procedures.

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). However, in this case the DJS did not serve as a public agency responsible for the provision of education services. 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 MSDE, JSEP to provide documentation by July 31, 2014, that an IEP team has convened to review and revise, as appropriate, the student's IEP, to ensure that it addresses the student's identified needs, and begin the reevaluation process in accordance with the IEP team's decisions made on February 27, 2014. Further, the IEP team must determine the *compensatory services*² or other remedy for the services missed as a result of the violations.

The MSDE further requires the MSDE, JSEP to provide documentation that it has convened an IEP team meeting with the Anne Arundel County Public Schools, or other school system in which the student is enrolled, to determine the services needed to remediate the violations and the plan for how the MSDE, JSEP will ensure that those services are provided to the student in coordination with the current school system.

² Compensatory services, for the purpose of this letter, mean the determination made by the IEP team as to how to remediate the denial of appropriate services to the student (34 CFR §300.151).

The MSDE, JSEP must provide the student's mother with proper written notice of the determinations made at the IEP team meeting including a written explanation of the basis for the determinations, as required by 34 CFR §300.503. If the mother disagrees with the IEP team's determinations, she maintains the right to request mediation or file a due process complaint, in accordance with the IDEA.

School-Based

The MSDE requires the MSDE, JSEP to provide documentation by the start of the 2014-2015 school year of the steps taken at the XXXXXXXXXXXX:

1. To ensure that proper procedures are followed to complete a timely educational record request and receipt of the educational record, in accordance with the State regulations;
2. To ensure proper procedures are followed to complete reevaluations;
3. To identify all similarly situated students at the XXXXXX XXXXX who have not been provided with special education and related services in accordance with their IEP and offer *compensatory services*² to be provided to redress the violation and take steps to ensure it does not recur.

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

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 student's parent and the public agency 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.

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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 public agency 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 complainant and the public agency 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

c: XXXXXXXXXXXX (c/o Grace Reusing)
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