



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

September 5, 2014

Grace Reusing, Esq.
Assistant Public Defender
Office of the Public Defender
Juvenile Protection Division
One South Calvert Plaza
201 East Baltimore Street, 8th Floor
Baltimore, Maryland 21202

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

RE: XXXXXXXX and
Similarly Situated Students
At the XXXXXXXXXXXXXXXX
and the XXXXXXXXXXXXXXXXXXXX

Reference: #15-003

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 July 10, 2014, the MSDE received a complaint from Grace Reusing, Esq., Office of the Public Defender, hereafter “the complainant,” on behalf of the above-referenced students with disabilities, who attended the Maryland State Department of Education, Juvenile Services Education Program at the XXXXXXXXXXXXXXXX from November 25, 2013 to June 1, 2014

and the Maryland State Department of Education, Juvenile Services Education Program at the XXXXXXXXXXXXXXXXXXXX from June 2, 2014 to July 1, 2014. The MSDE, DSE/EIS investigated the allegations of violations of the Individuals with Disabilities Education Act (IDEA) listed below with respect to the Maryland State Department of Education, Juvenile Services Education Program (MSDE, JSEP).

1. The MSDE, JSEP has not ensured that the students have been provided with special education instruction to enable them to achieve the annual Individualized Education Program (IEP) goals and to be involved in and make progress in the general education curriculum by special education teachers, as required by the IEP, in accordance with 34 CFR §§300.101, .103, .320, and .323.
2. The MSDE, JSEP has not ensured that the students have been provided with the related services required by the IEP, in accordance with 34 CFR §§300.101, .103, .320, and .323.
3. The MSDE, JSEP has not ensured that the students are provided with special education instruction from qualified teachers, in accordance with 34 CFR §§300.18 and .156.

INVESTIGATIVE PROCEDURES:

1. On July 14, 2014, the MSDE sent correspondence to the complainant that acknowledged receipt of the complaint and identified the allegations subject to this investigation. On the same date, the MSDE notified the MSDE, JSEP of the allegations and requested that the MSDE, JSEP review the alleged violations.
2. On July 22, 2014, Ms. Anita Mandis, Section Chief, Complaint Investigation Section, MSDE, and Ms. Tyra Williams, Education Program Specialist, MSDE, met with 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.
3. On July 22, 2014, Ms. Mandis requested a document from the complainant.
4. On July 23, 2014, the complainant provided Ms. Mandis with the requested document.
5. On July 24, 2014, Ms. Mandis requested additional documents from the MSDE, JSEP. On the same date, Ms. Mandis requested clarification from the complainant of information contained in the documents that she provided with the State complaint.

6. On July 25, 2014, the complainant provided information to Ms. Mandis in response the request for clarification of documents that was made on July 24, 2014.
7. On July 30, 2014, Ms. Mandis and Mr. Kratz reviewed student educational records at the XXXXXXXXXXXXXXXXXXXX. Mr. XXXXXXXXXXXX, Principal, was present as a representative of the educational program.
8. On July 30, 2014, the MSDE, JSEP provided to the MSDE documentation from the XXXXXXXXXXXXXXXX for consideration during the investigation.
9. On July 31, 2014, the complainant provided the MSDE with additional information and documentation for consideration during the investigation.
10. On August 14, 2014, Ms. Mandis conducted a telephone interview with the complainant about the allegations being investigated.
11. On August 15, 2014, Ms. Mandis requested additional information and documentation from the MSDE, JSEP.
12. On August 18, 2014, the MSDE, JSEP provided a response to the complaint.
13. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
 - a. The IEP developed in the XXXXXXXX on February 9, 2012;
 - b. "Intake Interview" form, dated November 26, 2013;
 - c. XXXXXXXXXXXXXXXXXXXX Communication Log and receipts of successful transmissions of facsimiles;
 - d. XXXXXXXXXXXXXXXXXXXX Class Schedule;
 - e. Written summary of the December 11, 2013 meeting of the XXXXXXXXXXXX XXXXXXXX school staff to review the student's IEP;
 - f. "Related Services Log Notes," dated from January 3, 2014 to April 7, 2014;
 - g. The IEP revised at the XXXXXXXXXXXXXXXXXXXX on January 9, 2014 and written summary of the IEP team meeting;
 - h. Career Inventory completed by the student on March 25, 2014;
 - i. Reports on the student's progress toward achieving the annual IEP goals, dated April 11, 2014 and June 27, 2014;
 - j. The MSDE, JSEP policies and procedures for the supervision of staff by highly qualified teachers while recruiting certified teachers in the core content areas, dated June 1, 2014;
 - k. Student Record Card 7, signed by the principal of the XXXXXXXXXXXXXXXXXXXX;

- l. XXXXXXXXXXXXXXXXXXXXXXXX Communication Log;
- m. Student Record Card 7, signed by the principal of the XXXXXXXXXXXXXXXX
XXXXXX on July 7, 2014; and
- n. Correspondence from the complainant to the MSDE containing allegations of
violations of the IDEA, received on July 10, 2014.

BACKGROUND:

MSDE, JSEP

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 seven (7) DJS facilities, assumed the educational programming in the remaining facilities, including at the XXXXXXXXXXXXXXXX and XXXXXXXXXXXXXXXX. 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 IDEA.

The Named Student

The named student above is nineteen (19) years old and is identified as a student with an Emotional Disability under the IDEA. He has an IEP that requires the provision of special education and related services (Docs. f and g).

From November 22, 2013 to June 2, 2014, the DJS placed the student at the XXXXXXXXXXXXXXXX XXXX. While in that placement, the student participated in the educational program that is operated by the MSDE, JSEP (Docs. c, k, and n).

From June 2, 2014 to July 1, 2014, the DJS placed the student at the XXXXXXXXXXXXXXXX XXXX. While in that placement, the student participated in the educational program that is operated by the MSDE, JSEP (Docs. l - n).

The student is currently placed by the Maryland Department of Juvenile Services (DJS) at the XXXXXXXXXXXXXXXX, where he participates in the educational program that is operated by the MSDE, JSEP (Docs. f and g).

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

ALLEGATIONS #1 & #2 PROVISION OF SPECIAL EDUCATION INSTRUCTION AND RELATED SERVICES IN THE EDUCATIONAL PLACEMENT REQUIRED BY THE IEP AT THE XXXXXXXXXXXXXXXXXXXXXXXXXXXX FROM NOVEMBER 25, 2013 TO JUNE 2, 2014 AND AT THE XXXXXXXXXXXXXXXXXXXXXXXXXXXX FROM JUNE 2, 2014 TO JULY 1, 2014

FINDINGS OF FACTS:

Enrollment of the Named Student in the Educational Program at the XXXXXXXXXXXX XXXXX

1. On November 22, 2013, the DJS placed the student at the XXXXXXXXXXXXXXXXXXXX. At that time, the student had an IEP that was developed in the XXXXXXXXXXXX while the student was living in that jurisdiction (XXX IEP). However, during the intake process at the XXXXXXXXXXXXXXXXXXXX, the student reported that he did not have previously have an IEP (Docs. a and b).
2. On November 25, 2013, the student was enrolled in the educational program at the facility (Doc. c).
3. On November 26, 2013, the school staff at the XXXXXXXXXXXXXXXXXXXX successfully transmitted a written request for the student's educational record, by facsimile, to the school the student last attended in the XXXXXXXXXXXX (Doc. c).
4. On December 5, 2013, seven (7) school days after the first request, the school staff documented that a second request, successfully transmitted by facsimile, for the student's educational record from the school he attended in the XXXXXXXXXXXX. On that date, the school staff documented that contact was also made with the student's previous school by telephone and that documents from the student's educational record were received by the school staff at the XXXXXXXXXXXX (Doc. c).
5. The student's educational record includes a XXX IEP, which reflects that it was developed on February 9, 2012. The documents from the student's educational record also reflect that the XXX IEP was reviewed by the team at the student's previous school in the XXXXXXXXXXXX on November 8, 2012. However, there is no documentation of the decisions made by the IEP team on November 8, 2012, and no documentation that the school staff at the XXXXXXXXXXXX attempted to obtain clarification of the matter from the school the student attended in the XXXXXXXXXXXX (Docs. a and c).
6. On December 11, 2013, the school staff at the XXXXXXXXXXXXXXXXXXXX reviewed the XXX IEP and decided that it required review by the IEP team. On that date, the school

staff also distributed information about the IEP to teachers. The student was enrolled in classes that included a course in Algebra II. While the XXX IEP requires the provision of special education instruction to assist the student with developing skills in Geometry, the school staff report that they placed him in an Algebra II class instead of Geometry based on information from his previous school that he failed Geometry and had not taken Algebra II. However, the school's communication log reflects that the school staff at the XXXXXXXXXXXXXXXXXXXX did not request the student's transcripts from his previous school until January 8, 2014, and there is no documentation of the provision of the transcripts or information from those transcripts in response to the January 8, 2014 request (Doc. e).

Requirements of the XXX IEP for the Named Student

7. The XXX IEP includes annual goals for improving the student's math computation, reading comprehension, and written language skills. It also includes annual goals for developing appropriate behaviors for the educational setting by participating in class, completing assignments, and using coping strategies to decrease agitation and frustration (Doc. a).
8. In the description of the behavioral goals, the XXX IEP states that the student "receives group counseling on a weekly basis" to assist him with achieving the goals. The Services Section of the XXX IEP requires the provision of special education instruction and "behavioral support" as a related service outside of the general education classroom. However, it does not include information about the manner in which the services were to be provided or the provider of the services, and there is no documentation that the school staff at the XXXXXXXXXXXXXXXXXXXX sought clarification from the student's previous school of how the behavior support was being provided (Doc. a).
9. The XXX IEP reflects that the student was also to be provided with "transition counseling" to assist him in identifying the types of jobs in which he is interested and colleges that offer the course of study in which he is interested, developing a resume, and developing a monthly financial budget (Doc. a).
10. The Least Restrictive Environment (LRE) Section of the XXX IEP reflects that the special education and related services could not be provided in the general education classroom due to the severity of the student's disability. The XXX IEP indicates that the supplemental supports and services that were previously provided in an attempt to implement the IEP in the general education setting include a small group setting for services and "one-on-one assistance" (Doc. a).

Requirements of the January 9, 2014 IEP for the Named Student

11. On January 9, 2014, the IEP team at the XXXXXXXXXXXXXXXXXXXX reviewed the XXX IEP, revising the short-term objectives within the annual goals and deciding that the

special education instruction will be primarily provided by a general education teacher, but that it may also be provided by a special education teacher and an instructional assistant. The IEP does not reflect that a specific teaching methodology, such as a “co-teaching model,” is required to be used when providing the special education instruction (Doc. g).

12. The January 9, 2014 IEP requires the provision of weekly counseling services outside of the general education classroom to assist the student with achieving annual goals for using strategies to cope with frustration and anger in order to maintain appropriate classroom behavior and developing self-advocacy skills. The IEP states that the counseling services are to be provided primarily by the guidance counselor, but that they may also be provided by a psychologist and school social worker. The written summary of the IEP team meeting documents that the school staff at the XXXXXXXXXXXXXXXX believed that the XXX IEP had required that counseling be provided either in a group setting or on a one-to-one basis. However, there is no documentation that the team decided whether the services should continue to provide in this manner (Doc. g).
13. The IEP reflects that the student will work with a teacher to complete career skills assessments, and to explore and identify career opportunities (Doc. g).
14. The IEP reflects that the IEP team determined that the LRE in which the special education instruction can be provided is the general education setting with the provision of a small group setting, low teacher/student ratio, and the “school-wide discipline system” (Doc g).

**Enrollment of the Named Student in the Educational Program at the XXXXXXXXXXXXXXXX
XXXXXXXXXXXX**

15. On June 2, 2014, the DJS placed the student at the XXXXXXXXXXXXXXXX, and he was enrolled in the educational program at the facility on the same date. However, the school staff at the XXXXXXXXXXXXXXXX documented that the student’s educational record was not received from the XXXXXXXXXXXXXXXX until June 12, 2014 (Docs. l and m).
16. There is no documentation of when the school staff at the XXXXXXXXXXXXXXXX XXXXXXXX requested the student’s educational record from the XXXXXXXXXXXXXXXX (Doc. l).
17. On June 12, 2014, the school staff at the XXXXXXXXXXXXXXXX reviewed the student’s educational record and determined that it did not require review by the IEP team (Doc. l).

18. On June 16, 2014, the student's teachers and service providers were informed of the IEP requirements (Doc. 1).

IEP Implementation

Special Education Instruction

19. The XXXXXXXXXXXXXXXXXXXX school staff report that, at the December 11, 2013 meeting to review the XXX IEP, they decided that because intensive behavior supports are provided throughout the school, the student did not need to be removed from the general education classroom to access the services that were only available outside of the general education classroom in the XXXXXXXXXXXXXXXX (Docs. c, e, and Interviews with the school staff).
20. The school staff at the XXXXXXXXXXXXXXXXXXXX maintain daily logs of the students who are provided with special education instruction outside of the general education classroom. A sample of the logs reflects the provision of special education instruction outside of the general education classroom to another student who transferred to the facility with an IEP from the XXXXXXXXXXXXXXXX that requires the provision of special education instruction outside of the general education classroom. This student's educational record contains documentation that when the IEP team at the XXXXXXXX XXXXXXXXXXXXXXXX reviewed the IEP, it decided that the student continues to require the provision of instruction outside of the general education classroom (Review of logs of students at the XXXXXXXXXXXXXXXX receiving instruction outside of the general education classroom).
21. The reports of the named student's progress toward achieving the annual IEP goals made in April and June 2014 document that the goals were addressed through the provision of special education and related services, and that the student made sufficient progress on all of the goals (Doc. i).
22. The educational records of other students placed by the DJS at the XXXXXXXXXXXXXXXX XXXX contain quarterly reports of the students' progress toward achieving the annual IEP goals documenting that annual IEP goals are being addressed through special education and related services (Review of student educational records at the XXXXXXXX XXXXXXXXXXXXXXXX).
23. In addition to general education teachers, the teaching staff at the XXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXX includes two (2) special education teachers (Doc. d and Review of the list of staffing of the Juvenile Services Educational Programs).

Counseling Services

24. The written summary of the January 9, 2014 IEP team meeting in which the XXX IEP was revised documents that the school staff at the XXXXXXXXXXXXXXXXXXXX believed that the XXX IEP had required that counseling be provided either in a group setting or on a one-to-one basis. However, there is no indication of this on the XXX IEP and there is no documentation that the school staff at the XXXXXXXXXXXXXXXXXXXX sought clarification from the student's previous school of the services being provided (Docs. c and g).
25. A review of a document entitled, "Related Services Log Notes," reflects that, while at the XXXXXXXXXXXXXXXXXXXX and the XXXXXXXXXXXXXXXXXXXX, the student was provided with weekly counseling services to assist him with decreasing agitation and frustration and utilizing coping strategies. However, the services were provided on an individual basis and not as part of a group, as indicated in the XXX IEP. While the MSDE, JSEP staff report that it would inappropriate to place the student in a group with unfamiliar peers for counseling, there is no documentation that the IEP team made this decision (Docs. a, f, and g).
26. The documentation reflects that, although the IEP was received on December 5, 2013, counseling services were not initiated until December 17, 2013,² and that regular counseling sessions did not resume until January 3, 2014³ (Docs. c and f).

Transition Services

27. The MSDE, JSEP provides transition services through various career technology education courses, including a course entitled, "Career, Research and Development," in which the student participated (Docs. d, h, k, Review of samples of the student's class work, and the MSDE, JSEP website located at the following link:
http://www.marylandpublicschools.org/MSDE/divisions/careertech/juvenile_services/.

LEGAL REQUIREMENTS:

Provision of a Free Appropriate Public Education

The IDEA requires that a Free Appropriate Public Education (FAPE) be provided to students with disabilities. This is achieved through the development and implementation of an IEP that

² Between December 5, 2013 and December 17, 2013, there were two (2) school closures on December 9, 2013 and December 10, 2013 (Review of school calendar).

³ Between December 17, 2013 and January 3, 2014, the school was closed from December 23, 2013 through December 31, 2013 (Review of school calendar).

requires the provision of special education and related services that are designed to meet the needs that result from each student's disability and enable the student be involved in and make progress in the general curriculum (34 CFR §§300.101, .103, .320, and .323).

The special education services that are provided are to be based on the decisions made by the IEP team about the student's individual needs and not solely on factors such as the configuration of the service delivery system, availability of staff, or administrative convenience. Although the IDEA does not require that each school building be able to provide all of the special education and related services needed for all types and severity of disabilities, the public agency has an obligation to make available a full continuum of alternative placement options that maximize opportunities for students with disabilities to be educated with nondisabled students to the extent appropriate (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 order to ensure that students are provided with the special education and related services that are determined necessary by the IEP team, the IEP must include a clear statement of the special education services required (34 CFR §§300.101, .320, and .323).

Determination of the Educational Placement

In determining the educational placement of a student with a disability, the public agency must ensure that the decision is made in conformity with the LRE requirements,⁴ is based on the IEP, and is as close as possible to the student's home. Unless the IEP requires another arrangement, the public agency must also ensure that the student is educated in the school that the student would attend if not disabled (34 CFR §300.116).

Provision of a FAPE to Transferring Students

If a student with an IEP transfers to a new public agency, 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).

Since a student who is Court-ordered to be placed in a secure DJS facility is prohibited from receiving special education instruction in the educational placement required by an IEP that was

⁴ To the maximum extent appropriate, students with disabilities, including students in public or private institutions or other care facilities, must be educated with nondisabled students (34 CFR §300.114).

developed when the student resided in the community, the MSDE, JSEP will not be able to provide services in the manner described in the IEP for many of the students transferring into its educational programs. Because only the IEP team can determine the services in a DJS setting that are “comparable” to the services provided in the community, the MSDE, JSEP must, in consultation with the student’s parent, ensure the provision of a FAPE to the student until the IEP team determines comparable services at the facility or reviews and revises the IEP.

Students with disabilities in each DJS facility must be provided with access to instruction to allow them to achieve credit requirements necessary to progress toward the standards for graduation from a public high school in Maryland and prepare them 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 specific 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).

Records Maintenance

In order to ensure that transferring students are provided with the special education and related services needed to make progress on the IEP goals and progress through the general curriculum, the public agency must take reasonable steps to promptly obtain the student’s educational record, including the IEP and supporting documents (34 CFR §300.323). Student records provide information about a student’s academic performance, including the courses needed for graduation. Therefore, 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 Maryland Student Records System Manual requires that when a student transfers to another school, the sending school provide the receiving school with data using a form entitled, “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 a form entitled, “SR 2” (*Maryland Student Records System Manual*, 2011).

Within two (2) school days after receiving notice that a student in State-supervised care⁵ seeks to enroll, the public agency in which the student is seeking enrollment must make a written request

⁵ 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 juvenile services (Md. Code Ann., Educ. §8-501).

for the educational record of the student in State-supervised care from the public agency in which the student was previously enrolled. Within three (3) school days after receiving notice, the public agency in which the student in State-supervised care was previously enrolled must send the student's educational record to the public agency in which the student is seeking enrollment (COMAR 13A.08.07.03).

The MSDE, JSEP requires that school staff request the student's educational record from the last known school of enrollment within forty-eight (48) hours of receiving notice of the student's entry into a DJS facility. The school staff are required to maintain contact logs documenting at least three (3) diligent attempts within five (5) days to obtain the record and must continue their efforts until the record is obtained (Review of the MSDE, JSEP Special Education Policies and Procedures Manual).

DISCUSSION/CONCLUSIONS:

Allegation #1 Provision of Special Education Instruction

Upon Enrollment in the Educational Program at XXXXXXXXXXXXXXXXXXXX

In this case, the complainant alleges that the named student was not provided with the special education instruction from a special education teacher in the educational placement required by the IEP from November 25, 2013 to January 9, 2014 because instruction is provided to students transferring to the XXXXXXXXXXXXXXXXXXXX's educational program based upon the available service delivery system and not on each student's needs (Doc. n).

Based on the Finding of Fact #8, the MSDE finds that the XXX IEP did not require the provision of special education instruction from a special education teacher. Therefore, the MSDE does not find that a violation occurred with respect to the allegation that special education instruction was not delivered by the type of provider required by the IEP.

Based on the Findings of Facts #10, 14, and 19, the MSDE finds that student was not provided with special education instruction in the educational placement required by the IEP until it was revised on January 9, 2014. Based on these Findings of Facts, the MSDE finds that the school staff unilaterally determined the special education services to be provided until the IEP team reviewed and revised the IEP. Therefore, this office finds that a violation occurred with respect to this aspect of the allegation. However, based on the Findings of Facts #20 and #23, the MSDE finds that the documentation does not support the allegation that the services that are provided are based solely on the configuration of the service delivery system.

In addition, based on the Findings of Facts #1 - #4, the MSDE finds that the MSDE, JSEP did not ensure that there was follow up consistent with the public agency's procedures in order to make sure that the educational record was transferred in accordance with the State requirements. Based on those Findings of Facts, the MSDE finds that this resulted in a delay in the

implementation of the IEP. Furthermore, based on the Findings of Facts #1 - #4 and #6, the MSDE finds that the MSDE, JSEP has not ensured that the school staff at XXXXXXXXXX have consistently obtained student transcripts within sufficient time to ensure that students are enrolled in classes that will allow them to make progress on the IEP goals and progress through the general curriculum.

In addition, based on the Findings of Facts #5, #7, #8, and #12, the MSDE finds that the MSDE, JSEP did not ensure that the IEP was written clearly with respect to the special education and related services that were to be provided. Therefore, this office finds that violations have occurred with respect to this aspect of the allegation.

Following the Revision of the IEP at XXXXXXXXXXXXXXXXXXXXXXXXXXXX on January 9, 2014

The complainant further alleges that, even after the January 9, 2014 revision of the IEP at the XXXXXXXXXXXXXXXXXXXX, the named student was not provided with the special education instruction required by the IEP because the instruction that is provided at the facility is not designed to assist students with disabilities with achieving annual IEP goals (Doc. n).

Based on the Findings of Facts #21 and #22, the MSDE finds that there is documentation that the annual IEP goals are being addressed through the provision of special education instruction and related counseling services. Therefore, the MSDE does not find that a violation occurred with respect to this aspect of the allegation.

XXXXXXXXXXXXXXXXXXXXXXXXX

In this case, the complainant alleges that the school staff are not properly implementing the co-teaching service delivery model that is reported as being utilized in the educational program at the facility (Doc. n).

The IDEA does not require that an IEP include the specific instructional methodologies that will be used in delivering special education instruction to a student. However, if an IEP team determines that a specific instructional methodology is required by a student, the special education instruction must be delivered using that methodology (34 CFR §§300.101, .320, .323 and Analysis of Comments and Changes to the IDEA, *Federal Register*, Vol. 71, No. 156, p. 46665, August 14, 2006).

Based on the Finding of Fact #11, the MSDE finds that there is no information or documentation that the co-teaching model is required by the IEP. Therefore, this office does not find that the co-teaching method of instruction is required to be utilized at the facility, and does not find that a violation occurred with respect to this aspect of the allegation.

However, based on the Findings of Facts #15 - #18, the MSDE finds that the MSDE, JSEP has not ensured that student educational records are obtained in a timely manner at the XXXXXXX

XXXXXXXXXXXXXXXXX in order to make sure that required special education and related services are provided without delay and that students are enrolled in classes that will allow them to progress through the general curriculum. Therefore, this office finds that a violation has occurred with respect to the provision of special education and related services to students transferring to the educational program at the XXXXXXXXXXXXXXXXXXXX.

Allegation #2 Provision of Counseling Services

In this case, the complainant alleges that the student was not provided with either behavioral counseling services or transition counseling services during the months of November and December 2013 while he was placed at the XXXXXXXXXXXXXXXXXXXX (Doc. n).

Based on the Findings of Facts #9, #12, #13, #22, and #24 - #26, the MSDE finds that while there is documentation that counseling services were provided, the MSDE, JSEP did not ensure that the IEP was written clearly with respect to the behavioral counseling services that were required in order to make sure that those services were delivered consistent with the IEP team's decisions.

In addition, based on the Findings of Facts #1 - #4, #8, #12, #24, and #26, the MSDE finds that there was a delay in the initiation of those services because the student's educational record was not obtained in a timely manner, and that the student was not provided with the services with the frequency required by the IEP. Therefore, this office finds that violations occurred with respect to this allegation.

ALLEGATION #3: PROVISION OF SPECIAL EDUCATION INSTRUCTION BY QUALIFIED TEACHERS

FINDINGS OF FACTS:

XXXXXXXXXXXXXXXXX

28. A review of the list of staffing of the educational program at the XXXXXXXXXXXXXXXX XXXX reflects that there is a certified special education teacher on staff, but that none of the teachers providing instruction in the areas of English, math, science, or history are certified in the areas in which they are providing instruction (Review of the list of staffing of the Juvenile Services Educational Programs).
29. On June 1, 2014, the MSDE, JSEP policies and procedures for the supervision of staff by highly qualified teachers in the core content areas during the recruitment of certified teachers became effective. However, there is no documentation of the implementation of these procedures at the XXXXXXXXXXXXXXXX (Doc. j and Review of the list of staffing of the Juvenile Services Educational Programs).

XXXXXXXXXXXXXXXXXXXX

30. A review of the list of staffing of the educational program at the XXXXXXXXXXXX XXXXXXXX reflects that there is a certified special education teacher on staff, as well as teachers who are certified in the areas of English and science, but that none of the teachers providing instruction in the areas of math or history are certified in these areas (Review of the list of staffing of the Juvenile Services Educational Programs).
31. On June 1, 2014, the MSDE, JSEP policies and procedures for the supervision of staff by highly qualified teachers in the core content areas during the recruitment of certified teachers became effective. However, there is no documentation of the implementation of these procedures at the XXXXXXXXXXXXXXXXXXXX (Doc. j and Review of the list of staffing of the Juvenile Services Educational Programs).

DISCUSSION/CONCLUSIONS:

The IDEA requires that public agencies ensure that personnel providing special education services are appropriately and adequately prepared and trained, and requires that paraprofessionals and assistants who are used to assist in the provision of special education and related services are appropriately trained and supervised by highly qualified staff. The IDEA requirements incorporate the requirements of the Elementary and Secondary Education Act of 1965 (ESEA). These requirements include that teachers be fully licensed or certified to teach, and that they demonstrate subject matter knowledge in the core academic subjects that they teach (20 U.S.C. §1412(a) (14), 34 CFR §§200.25, .55, and .56, and 34 CFR §§300.18 and .156).

The IDEA regulations establish requirements for special education teachers in general, as well as those teaching core academic and multiple subjects (34 CFR §§200.56, 300.18, and 300.156). Core academic subjects means English, reading or language arts, mathematics, science, foreign languages, civics and government, economics, arts, history, and geography (34 CFR §300.10). Being highly qualified means that a special education teacher has obtained full State certification as a special education teacher and holds at least a bachelor's degree (34 CFR §300.18).

If a special education teacher is teaching core academic subjects, he or she must also hold certifications in the core academic areas being taught. However, the special education teacher is not required to demonstrate subject matter competence in a core academic subject if only providing consultation services to a general education teacher who holds a certification in the subject area or if only reinforcing instruction provided by such a teacher (34 CFR §§200.56, 300.18, and 300.156 and *Questions and Answers on Highly Qualified Teachers Serving Children with Disabilities*, United States Department of Education, Office of Special Education Programs (OSEP), January 2007).

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. The MSDE, JSEP is required to ensure that instruction is provided by personnel with valid Maryland Educator Certificates (COMAR 13A.05.11.07).

These requirements are designed to ensure that highly qualified personnel provide special education and related services to students with disabilities. However, they do 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).

Based on the Findings of Facts #27 - #30, the MSDE finds that the MSDE, JSEP has not ensured that special education instruction is provided by highly qualified teachers who are certified in the areas of instruction being provided at either the XXXXXXXXXXXXXXXXXXXX or the XXXX XXXXXXXXXXXXXXXX, and that a violation occurred with respect to this allegation.

Notwithstanding the violation, there is no individual student entitlement to the provision of instruction from a highly qualified teacher. In addition, the MSDE, JSEP has been required to take systemic corrective action related to this violation through the investigation of State complaint #14-112, the results of which were reported in a Letter of Findings on August 26, 2014. Therefore, no additional corrective action is required with respect to the violation.

CORRECTIVE ACTIONS/TIMELINES:

Student-Based

The MSDE requires the MSDE, JSEP to provide documentation by February 1, 2015 of the steps taken to locate the named student if he is no longer in a MSDE, JSEP educational program. If he is enrolled in another educational program, the MSDE, JSEP must coordinate with the current public agency to ensure that the IEP team has convened and made the following determinations based on the evaluation data:

1. The student's current levels of academic and functional performance;
2. The levels of academic and functional performance that were expected to be achieved by that time;
3. The amount and nature of services needed to compensate the student for the violations identified, based upon any identified discrepancy between the student's expected and actual levels of performance; and
4. A plan for how and when the services are to be provided within one (1) year of the date of this Letter of Findings.

Similarly-Situated Students

The MSDE requires the MSDE, JSEP to provide documentation by February 1, 2015 that the educational records for students with disabilities currently participating in the educational program at the XXXXXXXXXXXXXXX since November 25, 2013 and the XXXXXXXXXXXXXXX since June 2, 2014 have been reviewed for compliance with the requirements addressed in this investigation. For each student for which a violation is identified, the MSDE, JSEP must provide documentation of the steps taken to locate the student, and if the student is enrolled in an educational program, to coordinate with the current public agency to ensure that the IEP team has convened and made the following determinations based on the evaluation data:

1. The student's current levels of academic and functional performance;
2. The levels of academic and functional performance that were expected to be achieved by that time;
3. The amount and nature of services needed to compensate the student for the violations identified, based upon any identified discrepancy between the student's expected and actual levels of performance; and
4. A plan for how and when the services are to be provided within one (1) year of the date of this Letter of Findings.

School-Based

The MSDE requires the MSDE, JSEP to provide documentation by February 1, 2015 of the steps taken to ensure that the school staff at the XXXXXXXXXXXXXXX and the XXXXXXXXXXXXXXX comply with the IDEA and related State requirements as follows:

1. Obtain the necessary documents from student educational records in a timely manner to ensure that there is no delay in the implementation of the IEP and that students are enrolled in courses that will allow them to make progress in the general curriculum.
2. Follow proper procedures for ensuring that a FAPE is provided to each student until an IEP team either determines the comparable services that will be provided in the facility or reviews and revises the IEP consistent with the data.
3. Ensure that each IEP is written in a manner that is clear with respect to the special education and related services that are required to be provided.

Grace Reusing, Esq.
Ms. Beth Hart
September 5, 2014
Page 18

TECHNICAL ASSISTANCE:

Technical assistance is available to the parties through the Family Support and Dispute Resolution Branch, MSDE, 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.

Questions regarding the findings of facts, conclusions, and corrective actions contained in this letter should be addressed to this office in writing. The named student's 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 FAPE for the named student, including issues subject to this State complaint investigation, consistent with the IDEA. The MSDE recommends that this Letter of Findings be included with any request for mediation or due process.

Sincerely,

Marcella E. Franczkowski, M.S.
Assistant State Superintendent
Division of Special Education/
Early Intervention Services

MEF/am

cc:	XXXXXX	XXXXXXXXXX
	Jack R. Smith	XXXXXXXXXX
	Katharine M. Oliver	Dori Wilson
	Anna Lisa Nelson	Anita Mandis
	Samuel Kratz	Bonnie Preis