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State Superintendent of Schools

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October 9, 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: #15-007

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 August 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 and his mother, Ms. XXXXXXXXXXXX. The complainant alleged that the student participated in the Maryland State Department of Education, Juvenile Services Education Program at the XXXXX XXXXXXXXXXXXXXXXXXXX (XXXX) from January 18, 2014 through February 3, 2014 and at the XXXXXXXXXXXXXXXXXXXX since March 19, 2014 (Doc. aa).

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 did not follow proper procedures when transferring educational decision-making rights to the student while he was placed at the BCJJC, in accordance with 34 CFR §300.520 and Md. Code Ann., Educ. §8-421.1.
2. The MSDE, JSEP did not ensure that the student was provided with special education and related services required by the Individualized Education Program (IEP) while he was placed at both the XXXX and the XXXXXXXXXXXXXXXXXXXX until the IEP was revised on June 23, 2014, in accordance with 34 CFR §300.323.
3. The MSDE, JSEP has not ensured that the student has had access to special education instruction to allow him to be involved in and make progress in the general education curriculum since the start of the 2014-2015 school year which began on July 1, 2014, in accordance with 34 CFR §§300.101, .103, .320, and .323.

INVESTIGATIVE PROCEDURES:

1. On August 13, 2014, the MSDE sent a copy of the complaint to the MSDE, JSEP, via facsimile.
2. On August 14, 2014, Ms. Anita Mandis, Section Chief, Complaint Investigation Section, MSDE, conducted a telephone interview with the complainant to clarify the allegations to be investigated.
3. On August 15, 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.
4. On August 18, 2014, Ms. Mandis and Ms. Sharon Floyd, State Complaint Investigator Consultant, 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.
5. On September 3 and 20, 2014, the MSDE, JSEP provided documentation to be considered.
6. On September 4, 2014, Ms. Floyd requested documents from the complainant.
7. On September 4, 2014 and October 2, 2014, Ms. Floyd requested additional documents from the MSDE, JSEP.
8. On September 6, 2014, the complainant provided documentation to be considered.

9. On September 22, 2014, the MSDE, JSEP provided a written response to the complaint.
10. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
 - a. Facsimile cover sheet, student records, 62 pages, by XXXXX to XXXXXXXXX Youth Center, dated March 20, 2014;
 - b. Request for records, from XXXXXXXXXXXXX to XXX, dated March 19, 2014;
 - c. Letter to parent from XXXX, dated February 6, 2014, indicating implementation of the IEP is to begin on February 3, 2014 and identifying the case manager for the student;
 - d. Educational services record, from BCJJC, dated August 20, 2014;
 - e. Related Services Logs, dated February 4, 2014, March 11, 2014, and March 19, 2014, for counseling services;
 - f. The Individualized Education Program (IEP), developed by Baltimore City, XXXXXXXXXXXXX, dated January 27, 2014;
 - g. Student Refusal of Specialized Instruction and/or Related Services, from XXXX, dated March 11, 2014;
 - h. Letter of Certification to Not Disclose information in student records, from XXXXX, dated February 18, 2014;
 - i. IEP Snapshot developed on January 31, 2014 at the BCJJC;
 - j. Basic Achievement Skills Inventory (BASI), Math, dated March 5, 2014;
 - k. Basic Achievement Skills Inventory (BASI), Verbal, dated March 5, 2014;
 - l. Student Record Card 7, Maryland Student Withdrawal/Transfer Record, date of withdrawal July 16, 2013, from XXXXXXXXXXXXXXXXXXXXXXXX;
 - m. Student Record Card 7, Maryland Student Withdrawal/Transfer Record, date of withdrawal August 14, 2013, from XXXXXXXXXXXXXXXXXXXXXXXX;
 - n. Student Record Card 7, Maryland Student Withdrawal/Transfer Record, date of withdrawal January 18, 2014 thru February 3, 2014, from BCJJC;
 - o. Transcript, to BCJJC, dated July 16, 2013;
 - p. Transcript, to BCJJC, dated August 15, 2013;
 - q. Report Card, to BCJJC, dated March 23, 2013 to June 12, 2013;
 - r. IEP Snapshot, created by XXXXXXXXXXXXXXXXXXXXX, dated March 24, 2014;
 - s. IEP dated June 23, 2014 developed by XXXXXXXXXXXXXXXXXXXXXXXX;
 - t. The Individualized Education Program (IEP), progress report dated January 17, 2014, developed by XXXXXXXXXXXXX;
 - u. IEP Progress Report dated April 14, 2014, developed by XXXXXXXXXXXXXXXXXXXXXXXX;
 - v. Progress Report of Grades dated May 21, 2014, developed by XXXXXXXXXXXXXXXX;
 - w. Progress Report of Grades dated April 8, 2014, developed by XXXXXXXXXXXXXXXX;

- x. School Referral Form, dated April 9, 2014, developed by XXXXXXXXXXXXXXXX
XXXXX;
- y. School Behavioral Checklist, dated April 9, 2014, developed by XXXXXXXX
XXXXXX;
- z. Placement Summary, dated September 5, 2014;
- aa. Authorization for the Release of Records and Information by parent, dated
January 22, 2014;
- bb. Intake Interview dated February 20, 2014;
- cc. Intake Interview dated March 5, 2014;
- dd. Correspondence from the complainant containing allegations of violations of the
IDEA, received by the MSDE on August 11, 2014; and
- ee. Written response from the MSDE, JSEP, received on September 22, 2014.

BACKGROUND:

The 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). 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. 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 Student

The student is seventeen (17) 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. r and s).

At the start of the time period covered by this investigation, the student was placed by the DJS at the XXXXX. While in that placement, the student participated in the educational program that is operated by the MSDE, JSEP. Prior to his placement at the XXXXX, the student was enrolled in the XXXXXXXXXXXXXXXX within the Baltimore City Public Schools (BCPS) (Docs. c, d, f, h, i, o, p, q, t, and z).

Since March 19, 2014, the student has been placed by the DJS at the XXXXXXXXXXXXXXXX XXXXX, where he has participated in the educational program that is operated by the MSDE, JSEP (Docs. a, b, r, s, and x).

**ALLEGATION#1 TRANSFER OF EDUCATIONAL DECISION-MAKING
RIGHTS TO THE STUDENT AT THE BCJJC**

FINDING OF FACT:

1. On February 6, 2014, the school staff at the BCJJC sent the student’s parent correspondence indicating that they began implementing the student’s IEP on February 3, 2014. However, a form entitled, “Student Refusal of Specialized Instruction and/or Related Services,” signed by the student and dated March 11, 2014, documents that the school staff at the BCJJC permitted the student to make the decision to decline the offer to provide special education and related services.¹ At that time, the student had not reached the age of eighteen (18) and there is no documentation of notice to the student or his parent of the transfer of parental rights or that the parent’s rights had been extinguished or limited under State law (Docs. c, g, and bb).

DISCUSSION/CONCLUSIONS:

Under the IDEA, only the parent has the authority to make educational decisions for the student, including whether the student should continue to receive special education and related services, unless the parent’s rights have transferred to the student under State law, or unless the parent’s rights have been extinguished or limited (34 CFR §300.520 and *Analysis of Comments and Changes to the IDEA*, Federal Register, Vol. 71, No. 156, p. 46671).

In Maryland, certain requirements must be met² in order for educational decision-making rights to be transferred to students who have reached the age of eighteen (18), which is the age of majority.³ If educational decision-making rights are transferred to a student who has reached the age of majority, the public agency must provide notice to both the student and the parents of the transfer of rights (34 CFR §300.520 and Md. Code Ann., Educ., §8-412.1).

In this case, the complainant alleges that upon the student's enrollment in the educational program at the XXXXX, he was given the right to decide whether he would be provided with special education and related services in accordance with his IEP. The complainant asserts that educational decision-making rights had not been transferred to the student in accordance with the IDEA procedures and that the student did not meet the criteria for transferring educational decision-making rights to him at that time (Doc. dd).

¹ The student subsequently agreed, on March 20, 2014, to accept special education and related services while placed by the DJS at XXXXXXXXXXXXXXXXXXXXXXXX (Doc. cc).

² These include that the student not be placed in the custody of a State placement agency such as the DJS (Md. Code Ann., Educ., §8-412.1).

³ The age of majority means the age at which a person becomes a legal adult (Md. Ann. Code. Art. 1, § 24).

Based on the Finding of Fact #1, the MSDE finds that the documentation reflects that the student was given the right to decline the provision of special education and related services without educational decision-making rights having been transferred to him. Therefore, this office finds that a violation occurred with respect to the allegation.

**ALLEGATIONS #2 AND #3 SPECIAL EDUCATION INSTRUCTION TO
ENABLE THE STUDENT TO MAKE PROGRESS
TOWARD THE ANNUAL IEP GOALS AND TO
ENABLE THE STUDENT TO BE INVOLVED IN
AND MAKE PROGRESS IN THE GENERAL
EDUCATION CURRICULUM**

FINDINGS OF FACTS:

IEP and Credit Requirements

2. The IEP, dated January 27, 2014, which was developed at the XXXXXXXXXXXXX in Baltimore City, required that the student be provided with special education instruction to assist him with making progress toward annual goals designed to do the following:
 - a. Increase reading comprehension when given eleventh (11th) grade text;
 - b. Solve math and real world calculation programs when provided with instruction at the tenth (10th) grade instructional level by writing algebraic expressions to represent unknown quantities, writing equations and inequalities and applying given formulas to problem solving situations, and simplifying algebraic expressions by combining like terms;
 - c. Improve written language expression skills to the sixth (6th) grade level; and
 - d. Improve behavior by increasing school attendance, using anger management techniques, and following school rules (Doc. f).

The IEP states that the student was to be provided with special education instruction from a special education classroom teacher and counseling each week from a school social worker outside of the general education classroom. The IEP states that the basis for the educational placement decision was the student's need for a behavior management program "not easily provided in the general education environment" (Doc. f).

3. The student's BCPS transcript reflects that, prior to being placed at the BCJJC, the student had completed courses and received credit for ninth (9th) grade English and Algebra I (Docs. l, m, o, and p).

Services Provided at the BCJJC

4. While the MSDE, JSEP reports that the student was enrolled in the educational program at the XXXX on January 23, 2014 and remained at the BCJJC until March 19, 2014, the Student Record Card 7 (SR 7) generated by the XXXX reflects that the student was enrolled in the educational program on January 18, 2014 and remained at the XXX until February 3, 2014. The MSDE, JSEP's database reflects that the student was placed at the XXX from January 18, 2014 until March 19, 2014 (Docs. n, z, and review of MSDE, JSEP database information).
5. The XXXX school staff did not maintain documentation of the request for and receipt of the student's educational record from the BCPS (Review of educational record).
6. On March 5, 2014, a Basic Achievement Skills Inventory (BASI) was administered, which reflects that the student was performing at the eleventh (11th) grade level in math and had achieved the skills taught in Algebra I (Docs. j and k).
7. The SR 7 completed by the school staff at the XXXXX reflects that the student was enrolled in courses including ninth (9th) grade reading, ninth (9th) grade English, and Algebra I (Doc. n).
8. There is no documentation of who provided instruction to the student or the educational placement in which instruction was provided (Review of the educational record).

Services Provided at the XXXXXXXXXXXXXXXXXXXXXXXXXX

9. There is documentation that the student was enrolled in the educational program at the XXXXXXXXXXXXXXXXXX Center on March 19, 2014, and that his educational record was obtained by the XXXXXXXXXXXXXXXXXX staff on the same date (Doc. b).
10. The reports of the student's performance in his classes at the XXXXXXXXXXXXXXXXXX XXX, dated April 8, 2014 and May 21, 2014, reflect that he has been enrolled in courses including Basic English 10, Reading, The Foundations of Algebra, Geometry, Basic Science, Biology, Basic Social Studies, and Government. These documents reflect that instruction was provided by a special education teacher in both The Foundations of Algebra and in Basic Social Studies. Instruction has been provided in all other courses by general education teachers, and there is no documentation that assistance has been provided to the general education teachers by a special education teacher (Docs. v and w).

11. A document entitled, "School Behavioral Checklist," dated April 9, 2014, documents that while the student was enrolled in the educational program at the XXXXXXXXXXXXXXXXXX, he refused to complete school work. When asked why he would not complete the work, the student reported that he believed that the school would award him credits for the courses in which he was enrolled regardless of whether he earned them (Doc. y).
12. The reports of the student's progress toward achievement of the annual IEP goals made by the school staff at the XXXXXXXXXXXXXXXXXX on April 17, 2014, state that the student was making sufficient progress to achieve the goals. However, in the description of the basis for the decision, it states that the student was making "minimal progress on his behavioral goals" (Doc. u).
13. On June 23, 2014, the IEP was revised at the XXXXXXXXXXXXXXXXXX. As a result, the goals to improve reading and math skills no longer require that the provision of a specific grade level text and instruction in order to achieve the goals. The goal to improve math skills was revised to require the student to analyze geometric relationships instead of having to complete algebraic equations (Doc. s).
14. The June 23, 2014 IEP was revised to require that special education instruction be provided by a general education teacher instead of a special education teacher. However, the IEP requires that instructional and testing accommodations be provided by a special education teacher (Doc. s).
15. The June 23, 2014 IEP states that the student is no longer demonstrating interfering behaviors and that he was making sufficient progress towards achievement of the annual IEP goals at that time. However, the IEP also states that the student continues to have difficulty with completing his work and refusing to participate in class, which impacts his academic and functional performance. The IEP team also documented its decision that the student continues to require a BIP. While the team documented that it reviewed a BIP that was developed on May 23, 2013 and decided that it continues to remain appropriate, the student's educational record does not contain a BIP. In addition, the present levels of performance described in the IEP refer to the student by another student's name in several places (Doc. s).
16. The June 23, 2014 IEP requires that special education instruction be provided in the general education classroom instead of a separate special education classroom. However, a March 24, 2014 "IEP Snapshot" (summary of IEP requirements that is provided to the student's teachers) and reports of the student's classroom performance reflect that the student has been provided with instruction in the general education classroom since being placed at the XXXXXXXXXXXXXXXXXX (Docs. r and s).
17. The log of the provision of counseling services reflects that the student has not been provided with the amount of counseling services as required by the IEP (Doc. e).

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 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).

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).

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 Least Restrictive Environment (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).

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).

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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 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 all IEP documents and assessment data used to develop the IEP be maintained in the student’s education record (*Maryland Student Records System Manual, 2011*). The Maryland Student Records System Manual also 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 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 #2 Provision of Special Education and Related Services to Assist the Student in Making Progress Toward the Annual IEP Goals From January 18, 2014 until June 23, 2014

- A. In this case, the complainant alleges that the student has not been provided with the special education and related services required by the IEP. The complainant specifically asserts that the student was not provided with special education instruction and related services to assist him to achieve the annual IEP goals. For example, the complainant reports that the annual math goal required the student to solve algebraic calculations at the tenth (10th) grade level, but that the instruction in his Foundations of Algebra class was not provided at the tenth grade instructional level.

Based on the Finding of Fact #5, the MSDE finds that there is no documentation that the XXXX school staff followed proper procedures to obtain the student's educational record upon his enrollment in the educational program in order to ensure that he could be provided with a Free Appropriate Public Education (FAPE) while participating in the program.

Based on the Findings of Facts #4 and #15, the MSDE finds that there is no documentation that the XXXX or the XXXXXXXXXXXXXXXXXXXXXXX school staff have maintained accurate

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).

documentation in the student's educational record in order to ensure the appropriate planning of the student's education and the provision of appropriate special education services.

Based on the Findings of Facts #2, #6, #7, #9, #10, and #13, the MSDE further finds that the student was not provided with special education instruction to assist him to achieve the annual IEP goals to improve his reading and math skills from the time that he was placed at the XXXX until the IEP was revised at the XXXXXXXXXXXXXXX on June 23, 2014.

Based on the Findings of Facts #17, the MSDE finds that the student has not been provided with the amount of counseling services required by the IEP.

Based on the above, this office finds that violations occurred with respect to this aspect of the allegation.

- B. The complainant also alleges that the student was not provided with special education instruction in the educational placement required by the IEP. The complainant specifically states that the instruction has been provided in the general education classroom, where the student does not receive sufficient support to access the instruction. The complainant asserts that as a result, the student has not been able to maintain attention to tasks and to make progress on the annual IEP goals.

Based on the Findings of Facts #2, #8, and #16, the MSDE finds that the student was not provided with special education instruction in the educational placement required by the IEP from the time he was placed at the XXXXX until the XXXXXXXXXXXXXXXXXXXX IEP team revised the IEP on June 23, 2014. Therefore, this office finds that a violation occurred with respect to this aspect of the allegation.

- C. The complainant further alleges that the student was not provided with special education instruction by a special education teacher, as required by the IEP.

Based on the Findings of Facts #2, #8, #10, and #14, the MSDE finds that special education instruction was not provided by a special education teacher in all areas of instruction, as required by the IEP, from the time that the student was placed at the XXXXXXX until the XXXXXXXX XXXXXXXXXXXX IEP team revised the IEP on June 23, 2014.

Based on those Findings of Facts, the MSDE finds that the instructional and testing accommodations have not been provided by a special education teacher in all areas of instruction since the IEP was revised on June 23, 2014. Therefore, this office finds that violations occurred with respect to this aspect of the allegation.

**Allegation #3 Provision of Special Education and Related Services to Enable
the Student to Progress through the General Curriculum
Since the start of the 2014-2015 School Year (July 1, 2014)**

In this case, the complainant alleges that the student has not been enrolled in specific content courses that will enable him to progress through the general curriculum (Doc. dd).

Based on the Findings of Facts #3, #4, #7, and #10, the MSDE finds that, although the student has been enrolled in classes that would not enable him to progress through the general curriculum during the 2013-2014 school year, since July 1, 2014 (the time period covered by this investigation),⁶ the student has been enrolled in courses that will allow him to progress through the general curriculum. Therefore, this office does not find that a violation occurred with respect to this allegation.

**ADDITIONAL ISSUES IDENTIFIED DURING THE COURSE OF THE
INVESTIGATION**

Addressing the Student's Interfering Behavior

As stated above, in order to provide a student with a FAPE, the public agency must ensure that an IEP is developed that addresses all of the needs that arise out of the student's disability that are identified in the evaluation data. In the case of a student whose behavior interferes with his learning or the learning of others, the public agency must ensure that the IEP team considers positive behavioral interventions and supports to address the behavior (34 CFR §§300.101, .320, and .324).

Based on the Findings of Facts #1, #11, #12, and #15, the MSDE finds that the student has exhibited behavior at both the BCJJC and the XXXXXXXXXXXXXXXXXXXX that interferes with his learning. However, based on those Findings of Facts, the MSDE finds that the MSDE, JSEP has not ensured that the IEP team considered positive behavioral interventions to address the student's interfering behavior. Therefore, this office finds that a violation has occurred.

Decisions Made by the IEP Team at the XXXXXXXXXXXXXXXXXXXX on June 23, 2014

The public agency must ensure that the IEP team reviews the IEP periodically, but not less than annually, to determine whether the annual goals are being achieved. In addition, the public

⁶ Through the investigation of a previous State complaint (#14-039), this office found that the MSDE, JSEP did not ensure that students enrolled in the educational programs that it operates within the DJS facilities during the 2013-2014 school year were enrolled in courses that would enable them to progress through the general curriculum, and required that corrective action be taken to address the violation. Therefore, the allegation in this State complaint is being addressed for the 2014-2015 school year.

agency must ensure that the IEP team reviews and revises, as appropriate, the IEP to address any lack of expected progress toward the annual goals (34 CFR §300.324).

The United States Department of Education, Office of Special Education Programs (OSEP), requires that, during the investigation of an allegation that a student has not been provided with an appropriate educational program under the IDEA, the State Educational Agency (SEA) review the procedures that were followed to reach determinations about the program. The SEA must also review the evaluation data to determine if decisions made by the IEP team are consistent with the data. While the SEA may not overturn the IEP team's decisions, when it is determined that the public agency has not followed proper procedures, the SEA may require the public agency to ensure that the IEP team follows proper procedures to review and revise, as appropriate, the program to ensure that it addresses the needs identified in the data. (OSEP Letter #00-20, July 17, 2000 and *Analysis of Comments and Changes to the IDEA*, Federal Register, Vol. 71, No. 156, p.46601, August 14, 2006).

Based on the Findings of Facts #11, #12, and #15, the MSDE finds that the decisions made by the IEP team on June 23, 2014 that the student was no longer demonstrating interfering behaviors and was making sufficient progress toward achievement of the annual IEP goals were not consistent with the data. Therefore, the MSDE finds that violations have occurred.

CORRECTIVE ACTIONS/TIMELINES:

Student-Based

The MSDE requires the MSDE, JSEP to provide documentation by December 1, 2014 that the IEP team has taken the following action:

1. Determined the student's current levels of academic and functional performance;
2. Determined the levels of academic and functional performance that were expected to be achieved by that time;
3. Reviewed and revised the IEP, as appropriate, to ensure that it addresses the student's needs, including his behavioral needs in the education setting, and lack of progress toward achievement of the annual IEP goals, consistent with the data;
4. Determined the amount and nature of services needed to compensate the student for the violations identified through this investigation; and
5. Developed a plan for how and when the services are to be provided within one (1) year of the date of this Letter of Findings.

If the student is no longer in a MSDE, JSEP educational program and cannot be located, the MSDE, JSEP must provide documentation that sufficient steps were taken to locate him. If the student is enrolled in another public agency, the MSDE, JSEP must coordinate with the current public agency to ensure that the above actions are taken.

Similarly-Situated Students

The MSDE requires the MSDE, JSEP to provide documentation by December 1, 2014 that the educational records for students with disabilities who have been placed at the XXXXX and the XXXXXXXXXXXXXXXXXXXX since January 18, 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 that the IEP team has taken the following actions:

1. Determined the student's current levels of academic and functional performance;
2. Determined the levels of academic and functional performance that were expected to be achieved by that time;
3. Reviewed and revised the IEP, as appropriate, to ensure that it addresses all of the student's needs and any lack of expected progress, consistent with the data;
4. Determined the amount and nature of services needed to compensate the student for the violations identified; and
5. Developed a plan for how and when the services are to be provided within one (1) year of the date of this Letter of Findings.

If a student is no longer in a MSDE, JSEP educational program and cannot be located, the MSDE, JSEP must provide documentation that sufficient steps were taken to locate the student. If a student is enrolled in another public agency, the MSDE, JSEP must coordinate with the current public agency to ensure that the above actions are taken.

School/System-Based

The MSDE requires the MSDE, JSEP to provide documentation by December 1, 2014 of the steps taken to ensure that the school staff at the BCJJC and the XXXXXXXXXXXXXXXXXXXX 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 there is appropriate educational planning for each student.

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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. Comply with the IDEA and related State requirements for transferring educational decision-making rights to students.

The MSDE requires the MSDE, JSEP to provide documentation by January 1, 2015 of the steps taken to determine whether the violations identified in this investigation constitute a pattern of noncompliance in all educational programs operated by the MSDE, JSEP. Specifically, a review of student records, data, or other relevant information must be conducted in order to determine if the regulatory requirements are being implemented and documentation of the results of this review must be provided to the MSDE. If compliance with the requirements is reported, the MSDE staff will verify compliance with the determinations found in the initial report.

If the regulatory requirements are not being implemented, actions to be taken in order to ensure that the violation does not recur must be identified, and a follow-up report to document correction must be submitted within ninety (90) days of the initial date of a determination of non-compliance. Upon receipt of this report, the MSDE will re-verify the data to ensure continued compliance with the regulatory requirements.

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.

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