



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

October 10, 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: XXX
Reference: #15-010

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 student. This correspondence is the report of the final results of the investigation.

ALLEGATIONS:

On August 15, 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. XXXXX. The student participated in the Maryland State Department of Education, Juvenile Services Education Program at the XXXXXXXXXXXXXXXXXXXXXXXX (XXXXXX) from December 26, 2013 to January 14, 2014 and at the XXXXXXXXXXXXXXXX XXXXX from January 15, 2014 to July 16, 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 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 XXXXX and the XXXXXXXXXXXXXXXXXXXXXXXXXXXX until the IEP was revised on February 10, 2014, in accordance with 34 CFR §300.323.
2. 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 from the start of the 2014-2015 school year which began on July 1, 2014, until July 16, 2014, in accordance with 34 CFR §§300.101, .103, .320, and .323.
3. The MSDE, JSEP did not ensure that the student was provided with special education instruction from qualified teachers, in accordance with 34 CFR §§18 and .156.
4. The MSDE, JSEP did not ensure that the student's educational record was accurately maintained and transferred to the student's school upon his return to the community, in accordance with 34 CFR §300.624, COMAR 13A.08.02 and *The Maryland Student Records System Manual*.

INVESTIGATIVE PROCEDURES:

1. On August 18, 2014, the MSDE sent a copy of the complaint to the MSDE, JSEP, via facsimile.
2. On August 20, 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.
3. On September 3, 2014, Ms. Sharon Floyd, State Complaint Investigator Consultant, MSDE, and Ms. Anita Mandis, Section Chief, Complaint Investigation Section, 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.
4. On September 8, 2014, the MSDE, JSEP provided additional documentation to be considered.
5. On September 15 and 29, 2014, Ms. Floyd requested additional documentation from the MSDE, JSEP.
6. On September 23 and 29, 2014, the MSDE, JSEP provided documentation to be considered.

7. On September 24, 2014, the complainant provided correspondence to the MSDE containing additional allegations of violations of the IDEA.
8. On October 3, 2014, the MSDE sent correspondence to the complainant identifying the additional allegations to be investigated. On the same date, the MSDE notified the MSDE, JSEP of the allegations and requested that the MSDE, JSEP review the alleged violations.
9. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
 - a. Student Record Card 2 for the 2012-2013 school year from the Somerset County Public Schools;
 - b. The Individualized Education Program (IEP), dated April 10, 2013;
 - c. Intake Interview form, dated January 2, 2014;
 - d. Transfer information from the Somerset County Public Schools, dated January 2 and 13, 2014;
 - e. Request for the student's educational record, dated January 3, 2014;
 - f. Entries from the MSDE, JSEP Communication Log, dated January 13 and 14, 2014;
 - g. The IEP Snapshot document, dated January 14, 2014;
 - h. Maryland Student Exit Record, dated January 15, 2014;
 - i. Request for the student's educational record, dated January 15, 2014;
 - j. Receipt of the educational record, dated January 23, 2014;
 - k. Reports of the Basic Achievement Skills Inventory (BASI), Verbal and Math, dated January 13, 2014,
 - l. The IEP, dated February 10, 2014 and the written summary of the February 10, 2014 IEP team meeting;
 - m. The student's report cards and reports of his classroom performance at the XXXXXXXXXXXXXXXX until February 4, 2014;
 - n. Reports of the student's progress toward achievement of the annual IEP goals, dated February 10, 2014;
 - o. Graded reports of the student's classroom performance, dated March 25, 2014, April 8, 2014, and May 21, 2014;
 - p. Reports of the Basic Achievement Skills Inventory (BASI), Verbal and Math, dated March 27, 2014; and
 - q. Correspondence from the complainant containing allegations of violations of the IDEA, received on August 11, 2014 and October 3, 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).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. 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 Other Health Impairment under the IDEA related to difficulty with inattention and impulsivity. He has an IEP that requires the provision of special education and related services (Docs. l and q).

Prior to December 26, 2013, the student attended the XXXXXXXXXXXXXXXXXXXX, a public separate special education school operated through a partnership between the Somerset County Public Schools (SCPS) and the XXXXXXXXXXXXXXXXXXXX (Docs. a, b, d, and q).

From December 26, 2013 to January 14, 2014, the DJS placed the student at the XXXXXXXX XXXXXXXXXXXXXXXXXXXX (XXXX). There is no documentation that the student participated in an educational program while placed at the XXXX (Docs. c, h, and review of educational record).

From January 14, 2014 to July 16, 2014, the DJS placed the student at the XXXXXXXXXXXX XXXXXXXX. While in that placement, the student has participated in the educational program that is operated by the MSDE, JSEP (Docs. e - g and i - q).

On July 16, 2014, the DJS returned the student to the community (Doc. q).

FINDINGS OF FACTS:

IEP and Credit Requirements

1. The IEP that was in effect when the student was placed at the XXXX was developed at the XXXXXXXXXXXXXXXXXXXX in Somerset County. The IEP states that the student's disability impacted his education in the areas of math, written language, and behavior. It states that the student was reading on a sixth (6th) grade level, that he was performing at

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

a third (3rd) grade instructional level in math, and that his written language skills were “significantly below grade level” (Doc. b).

2. The IEP requires the provision of special education instruction by a special education classroom teacher, a general education teacher, an instructional assistant, and staff from the XXXXXXXXXXXXXXXX and counseling services from a school social worker. The special education instruction and counseling were to be provided to assist the student to progress toward achievement of goals to do the following by July 15, 2013:
 - a. divide fractions by fractions;
 - b. create equations and describe numbers or relationships;
 - c. write arguments to support claims ;
 - d. write narratives to develop real or imagined experiences or events;
 - e. identify and choose appropriate coping skills;
 - f. communicate appropriately with others; and
 - g. display on-task behavior in order to complete work.

The IEP states that the Least Restrictive Environment (LRE) in which the education program can be implemented is a public separate special education school due to the student’s need for a small setting with counseling in order to manage his anger and behavior (Doc. b).

3. The student's SCPS transcript reflects that, prior to being placed at the XXXXX, he had completed courses and received credit for grade 9 English, world history, and environmental literacy (Docs. a and d).

Provision of Services at the XXXXXXXX

4. On December 26, 2013, the student was placed by the DJS at the XXXX (Docs. h and q).
5. There is documentation that, on January 3, 2014, the XXXXX school staff requested the student's educational record from the Somerset County Public Schools (SCPS), but there is no documentation that additional attempts were made to obtain the record or that it was received while the student was placed at the XXXXXXXX (Docs. c, e, and review of the educational record).

Provision of Services at the XXXXXXXXXXXXXXXXXXXXXXXX

6. On January 15, 2014, the student was enrolled in the educational program at the XXXX XXXXXXXXXXXXXXXX. On the same date, the school staff made a request for the student's educational record (Doc. h - j).

7. On January 23, 2014, the student's educational record was received. On the same date, the school staff reviewed the record and decided that an IEP team needed to convene to review the IEP (Docs. g and j).
8. There is no documentation that attempts were made to obtain the educational record between January 15 and 23, 2014 (Review of the educational record).
9. On February 7, 2014, the student was enrolled in courses including grade 9 reading and English, Foundations of Algebra, grade 9 social studies and science, and grade 9 career life skills (Docs. m and o).
10. On February 10, 2014, the IEP team at the XXXXXXXXXXXXXXXXXXXX reviewed the IEP. At that time, the team documented that the student was continuing to read at a sixth (6th) grade level, that he was performing at the third (3rd) grade level in math calculation and the fourth (4th) grade level in math problem solving, and that his written language skills were at the fifth (5th) grade level. The IEP team documented its decision that, based on data from 2011 and 2012, the student's disability impacts his reading comprehension skills, and added a goal for the student to improve his skills in this area (Doc. l).
11. The goals in the IEP that was reviewed on February 10, 2014 were to be achieved by July 15, 2013 and there is no documentation that the IEP team determined that the goals had been achieved. However, the team documented its decision that the student was making sufficient progress toward achievement of the IEP goals, but revised the goals without explanation, documenting that the revisions were also based on data from 2011 and 2012 (Docs. l and n).
12. At the February 10, 2014 IEP team meeting, the IEP was also revised to require that the special education instruction be provided by a special education classroom teacher, a general education teacher, or instructional assistant in the general education classroom. The team also decided that the counseling services would be provided for one (1) hour per month by a psychologist or guidance counselor (Doc. l).
13. The February 10, 2014 IEP states that the LRE in which the special education instruction could be provided is the general education classroom due to the small, therapeutic setting at the DJS facility, which is designed to assist students in developing coping skills and safe behavior (Doc. l).
14. The school staff did not begin implementing the IEP until after it was revised on February 10, 2014 (Docs. m and o).

15. On May 21, 2014, the student's schedule was changed to reflect that he was taking a course entitled Conceptual Algebra instead of the Foundations of Algebra, and that he was taking grade 9 government and biology (Docs. m and o).
16. A review of the list of staff at the Juvenile Services Education Programs reflects that only the student's reading and biology teachers hold certificates in the areas of instruction that is provided to the student (Review of staffing at the Juvenile Services Education Programs).
17. There is documentation that the student earned one half (.5) of a credit in English, one-half (.5) of a credit in math, one-half (.5) of a credit in biology, and one-half (.5) of a credit in government, as well as one (1) credit in career technology education while participating in the educational program at the XXXXXXXXXXXXXXXXXXXX. However, the Student Record Card 7 (SR 7) for the student does not reflect the credits that he earned through the SCPS, and incorrectly reports that he participated in the educational program at XXXXXXXXXXXXXXXXXXXX instead of the XXXXXXXX XXXXXXXX (Docs. a, d, h, m, and o).

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 LRE requirements,² 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).

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).

Teacher Qualifications

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 qualified (34 CFR §§300.18, .101, .156, .323).

² 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).

Grace Reusing, Esq.
Ms. Beth Hart
October 10, 2014
Page 9

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

These qualifications must be designed to ensure that highly qualified personnel provide special education and related services to students with disabilities. However, this requirement does not create a right of action on behalf of an individual student or class of students for the lack of the provision of instruction by an individual who is not highly qualified (34 CFR §§300.18, .101, .156, .323).

Maintenance and Transfer of Educational Records

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 care³ 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).

³ 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).

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 and Related Services to Assist
the Student in Making Progress Toward the Annual IEP Goals
From December 26, 2013 until February 10, 2014**

A. In this case, the complainant alleges that the school staff did not take appropriate steps to ensure that the student's educational record was obtained from his previous school in a timely manner (Doc. q).

Based on the Findings of Facts #4 - #9, the MSDE finds that the MSDE, JSEP did not ensure that the XXXXX or the XXXXXXXXXXXXXXXXXXXX school staff followed proper procedures to obtain the educational record in a timely manner in order to avoid a delay in the implementation of the IEP. Based on the Findings of Facts #1 and #2 and #10 - #14, the MSDE further finds that the MSDE, JSEP did not ensure that the IEP was implemented once it was received at the XXXX XXXXXXXXXXXXXXX. Therefore, this office finds that violations occurred with respect to this aspect of the allegation.

B. In this case the complainant also alleges that the student was not provided with special education instruction at his instructional level to assist him to achieve the annual IEP goals (Doc. q).

Based on the Findings of Facts #3 and #9, the MSDE finds that the student was enrolled in an English 9 class for which he already earned. Therefore, this office finds that a violation occurred with respect to this aspect of the allegation.

C. In this case, the complainant further alleges that the student was not provided with the 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 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 (Doc. q).

As stated above, this office finds that the IEP was not implemented prior to the revision that occurred on February 10, 2014. Therefore, this office finds that a violation occurred with respect to this aspect of the allegation.

- D. In addition, the complainant alleges that the student was not provided with special education instruction by a special education teacher, as required by the IEP (Doc. q).

As stated above, this office finds that the IEP was not implemented prior to the revision that occurred on February 10, 2014. Therefore, this office finds that a violation occurred with respect to this aspect of the allegation.

Allegation #2 Provision of Special Education and Related Services to Enable the Student to Progress through the General Curriculum From the Start of the 2014-2015 School Year (July 1, 2014) Until July 16, 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. q).

Based on the Findings of Facts #3, #9, and #15, 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),⁴ 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.

Allegation #3 Maintenance of Educational Records

The complainant alleges that the MSDE, JSEP did not take appropriate steps to accurately maintain information in the student's educational record to ensure that he was able to earn credits to allow him to progress through the general curriculum upon his return to the community (Doc. q).

Based on the Finding of Fact #17, this office finds that the MSDE, JSEP has not ensured that accurate information has been maintained in the educational record to enable the student to earn required credits and to progress through the general curriculum. Therefore, this office finds a violation with respect to this allegation.

⁴ 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.

Allegation #4 Provision of Instruction by Qualified Teachers

The complainant alleges that the MSDE, JSEP does not ensure that instruction is provided by personnel who hold valid Maryland Educator Certificates in the areas in which they provide instruction (Doc. q).

Based on the Findings of Facts #15 and #16, this office finds that the student was not provided with special education instruction in all courses by teachers who were certified to provide instruction in those areas. Therefore, this office finds a violation with respect to this allegation.

Notwithstanding the violation, because the requirement does not create an individual right to receive instruction from highly qualified staff, no student-specific corrective action is required. 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 this violation.

ADDITIONAL ISSUE IDENTIFIED DURING THE COURSE OF THE INVESTIGATION

In addition to reviewing the IEP for a transferring student and determining whether to adopt or revise the IEP, as stated above, 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. The public agency must also 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 #10 and #11, the MSDE finds that the IEP team's February 10, 2014 decision that the student was making sufficient progress toward achievement of the annual IEP goals was inconsistent with the fact that the student had not achieved the goals by the date indicated on the IEP and the fact that the IEP team revised the goals. Therefore, the MSDE finds that a violation occurred.

CORRECTIVE ACTIONS/TIMELINES:

Student-Based

The MSDE requires the MSDE, JSEP to provide documentation by December 1, 2014 that the student's educational record contains accurate information about his school enrollment and the credits he has earned.

The MSDE requires the MSDE, JSEP to provide documentation by January 1, 2015 of the steps taken to locate the named student and, if he is enrolled in an educational program, to ensure 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, 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 February 1, 2015 that the educational records for students with disabilities who have been placed at the XXXXXX and the XXXXXXXXXXXXXXXXXXXX since December 26, 2013 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 educational record has been reviewed to ensure that it contains accurate information so that the student is able to earn credits to progress through the general curriculum.

The MSDE, JSEP must also 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, 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 March 1, 2015 of the steps taken to ensure that the school staff at the XXXXX 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.
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.

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

1. Ensure that the IEP team's decisions are consistent with the data.
2. Ensure that student educational records contain accurate information.

The MSDE requires the MSDE, JSEP to provide documentation by March 1, 2015 of the steps taken to determine whether the violations related to ensuring that the IEP team decisions are consistent with the data and ensuring that student educational records contain accurate information⁵ 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.

⁵ The MSDE, JSEP has been required to document that this action has been taken with respect to the remaining violations by January 1, 2015 through the investigation of State complaint #15-007, as reported in the Letter of Findings issued on October 9, 2015.

Grace Reusing, Esq.
Ms. Beth Hart
October 10, 2014
Page 16

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