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Ms. S. Beth Hart  
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Maryland State Department of Education  
200 West Baltimore Street  
Baltimore, Maryland 21201

RE: XXXXXXXXXXXX and Similarly-Situated  
Students at the XXXXXXXXXXXX  
Reference: #15-071

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 May 7, 2015, the MSDE received a complaint from Grace Reusing, Esq., Office of the Public Defender, hereafter “the complainant,” on behalf of the above-referenced named student and all other similarly-situated students placed at the XXXXXXXXXXXXXXXXXXXX (XXXX), a Maryland State Department of Education Juvenile Services Education (JSE)<sup>1</sup> school. In that correspondence, the complainant alleged that the JSE violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to the above-referenced students.

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<sup>1</sup> Formerly known as the MSDE, Juvenile Services Program (JSEP) and also known as the Juvenile Services Education Schools (JSES).

There is a sixty (60) day timeline for completion of the complaint investigation process. During the course of the investigation, additional allegations were raised involving an additional JSE school. In addition, documents to be reviewed as part of the investigation were the subject of a separate investigation of Medicaid fraud, which needed to be completed in order for this office to determine whether the documents would be used. In order to obtain the needed information to complete the investigation, it was necessary to extend the timeline for completion of this Letter of Findings, pursuant to (34 CFR §300.152).

The MSDE identified the allegations listed below for investigation.

1. The JSE has not ensured that educational instruction has been provided that meets the MSDE's educational standards since September 4, 2014, in accordance with 34 CFR §§300.2, .18, .101, .149, and COMAR 13A.03.02.03, .07, and .09, 13A.05.11.03 and .07, and 13A.12.01.01. The complainant specifically alleged the following:
  - a. That students are not provided with access to instruction in core courses that allows them to achieve credit requirements and assessments necessary to progress towards the standards for graduation;
  - b. That students are not provided with the opportunity to work towards obtaining student service requirements necessary for graduation;
  - c. That students are not provided with the opportunity to participate in a program that prepares them to successfully obtain a Maryland High School Diploma by examination through the General Educational Development (GED) Testing Program; and
  - d. That students are not provided with special education instruction from teachers who hold a valid Maryland certification in the areas of instruction provided.
2. The JSE has not ensured that students are provided with special education instruction by the service provider and in the placement required by the Individualized Education Program (IEP), since September 4, 2014, in accordance with 34 CFR §§300.2, .101, .103, and .323. The complainant specifically alleged the following:
  - a. That students are not provided with special education and related services during periods of time when they are scheduled to receive special education instruction and related services, but are not permitted to leave the residence for safety and security reasons.
  - b. That students are not provided with the special education instruction by the service provider in the educational placement required by the IEP when they transfer to the XXXX due to lack of adequate staff.

3. The JSE has not ensured that students are participating in State and district-wide assessments since September 4, 2014, in accordance with 34 CFR §§300.2, .101, .103, .160, .320, .323, and COMAR 13A.03.02.07.
4. The JSE has not ensured that there is data to support revisions that are made to the educational placement for students who are placed at the XXX since September 4, 2014, in accordance with 34 CFR §300.324.
5. The JSE did not ensure that the named student's parent was provided with the opportunity to participate in an April 29, 2015 IEP team meeting, in accordance with 34 CFR §300.322 and COMAR 13A.05.01.07.
6. The JSE has not ensured that the named student's educational records were maintained and transferred upon his exit from the XXXXXXXXXXXXXXXXXXXX, in accordance with 34 CFR §300.624, COMAR 13A.08.02 and *The Maryland Student Records System Manual*.
7. The JSE did not ensure that the named student was provided with special education instruction in the placement required by the IEP when he was placed at the XXXXXXXX XXXXXXXXXXXXXXXXXXXX (XXXXXXXXXX) on August 8, 2014, in accordance with 34 CFR §§300.101 and .323.
8. The JSE did not ensure that educational instruction was provided that meets the MSDE's educational standards while placed at XXXXXXXX on August 8, 2014, in accordance with 34 CFR §§300.2, .18, .101, .149, and COMAR 13A.03.02.03, .07, and .09, 13A.05.11.03 and .07, and 13A.12.01.01.
9. The JSE did not follow proper procedures to ensure the continuance of educational services upon the named student's exit from XXXXXXXX, including maintaining and transferring accurate educational records in a timely manner, in accordance with 34 CFR §300.624, COMAR 13A.08.02 and *The Maryland Student Records System Manual*.
10. The JSE has not ensured that students have been provided with the speech/language services required by the IEP since September 4, 2014, in accordance with 34 CFR §§300.101 and .323.
11. The JSE did not ensure that the IEP team's April 29, 2015 decision about whether the named student requires compensatory services was based on data regarding the student's needs, in accordance with 34 CFR §§300.324.

**INVESTIGATIVE PROCEDURES:**

1. On May 14, 2015, June 25, 2015, and August 10, 2015, Ms. Anita Mandis, Section Chief, Complaint Investigation Section, MSDE, conducted a telephone interview with the complainant about the allegations being investigated.
2. On May 19, 2015, the MSDE sent correspondence to the complainant that acknowledged receipt of the correspondences containing allegations of violations of the IDEA and identified the allegations subject to this investigation. On the same date, the MSDE notified the JSE of the allegations and requested that the JSE review the alleged violations.
3. On June 1 and 25, 2015, July 22, 2015, September 8, 2015, and October 19, 2015, the MSDE requested documents from the JSE.
4. On June 11, 2015, Ms. Mandis and Ms. Sharon Floyd, Education Program Specialist, MSDE, met with Ms. Beth Hart, Director, JSE, Ms. Crystal Fleming-Brice, Field Director, Instruction and Support, JSE, and Dr. Kim Lewis, JSE consultant, to discuss the allegations. On that date, the MSDE requested that the JSE provide documents for review in order to conduct the investigation.
5. On June 24, 2015 and September 30, 2015, Ms. Mandis met with Ms. Fleming-Brice to discuss the allegations being investigated.
6. On July 1, 2015, the complainant alleged additional IDEA violations.
7. On July 2, 2015, the MSDE sent correspondence to the complainant that acknowledged receipt of the July 1, 2015 correspondence and identified additional allegations subject to the investigation. On the same date, the MSDE notified the JSE of the additional allegations and requested that the JSE review the additional alleged violations.
8. On July 7, 2015, Ms. Mandis and Ms. Sharon Floyd, Education Program Specialist, MSDE, conducted a telephone conference with the complainant and Mr. M. Jacques Smith, Jr., former Academic Education Coordinator of the JSE, about the allegations in the complaint.
9. On July 9, 2015, Ms. Mandis and Ms. Vicky Ciulla, Monitoring and Accountability Specialist, MSDE, conducted a site visit at the XXXXXXXXXXXXXXXX (XXXX), and conducted interviews with the following school staff:
  - a. Ms. XXXXXXXX, Principal;
  - b. Mr. XXXXXXXX, Assistant Superintendent;

- c. Ms. XXXXXXXXXXXX, Special Education Teacher;
- d. Mr. XXXXXXXXXXXX, Career Research and Development Teacher;
- e. Mr. XXXXXXXXXXXX, Science Teacher; and
- f. Mr. XXXXX, Guidance Counselor.

Ms. Fleming-Brice participated in the site visit as a representative of the JSE and to provide information on the JSE's policies and procedures, as needed.

- 10. On July 13 and 20, 2015, September 2, 2015, and October 19 and 21, 2015, the JSE provided the MSDE with documentation.
- 11. On July 14, 2015, Ms. Mandis, Ms. Ciulla, and Dr. Nancy Birenbaum, Family Support Services Specialist, MSDE, conducted a site visit to the XXXXX XXXXXXXXXXXX XXXX (XXXXXX), and conducted interviews with Mr. XXXXXXX, Special Education Teacher, and Mr. XXXXXXX, Principal. Ms. Fleming-Brice participated in the site visit as a representative of the JSE and to provide information on the JSE's policies and procedures, as needed.
- 12. On July 29, 2015, Ms. Mandis and Ms. Bonwyn Preis, Compliance Specialist, MSDE, met with Ms. Anna Lisa Nelson, Field Director, School Administration Services, JSE, at the MSDE to review documents.
- 13. On August 25, 2015, Ms. Mandis, Ms. Ciulla, and Dr. Birenbaum, conducted a review of the educational records of students placed by the DJS at the XXXX since September 4, 2014.
- 14. On September 14, 2015, Ms. Mandis met again with Ms. Nelson at the MSDE to review documentation.
- 15. On September 28, 2015, Ms. Mandis met with Ms. Fleming-Brice and Dr. Lewis to review documentation.
- 16. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
  - a. Student record card (SR 3) from the 2012-2013 and 2013-2014 school years;
  - b. IEP, dated April 4, 2014;
  - c. Student record card 7 (SR 7) from June 9, 2014 to August 8, 2014;
  - d. Sample of a student Certificate of Completion of a career technology education course, dated July 24, 2014;
  - e. The *JSE Special Education Policy and Procedures* in effect since August 10, 2014;
  - f. Electronic mail (email) message among the JSE staff, dated September 3, 2014;

- g. SR 7 from September 4, 2014 to April 7, 2015;
- h. Communication log from September 4, 2014 to March 17, 2015;
- i. List of students placed at the XXXX since September 2014;
- j. Progress reports, dated September 26, 2014, October 10, 2014, October 24, 2014, November 7, 2014, December 19, 2014, January 16, 2015, February 20, 2015, March 6, 2015, March 20, 2015, and April 3, 2015;
- k. Email message from the JSE to the DJS, dated October 17, 2014;
- l. Youth Centers' Professional Development Agenda, dated September 11, 2014;
- m. The named student's report cards, dated November 26, 2014, February 6, 2015, and April 17, 2015;
- n. Third quarter 2014 report to the Maryland Legislature from the Maryland Office of the Attorney General Juvenile Justice Monitoring Unit;
- o. Correspondence from the complainant to the school staff, dated November 14, 2014;
- p. Speech/language service log, dated from December 18, 2014 to February 21, 2015;
- q. Log of the named student's attendance in the separate special education classroom from January 20, 2015 to March 16, 2015;
- r. The DJS description of the Intensive Services Unit Program at the XXXX, dated February 25, 2015;
- s. Written summary of an April 3, 2015 IEP team meeting held for the named student;
- t. Email between staff from the XXXXXX and the XXXXXXXXXXXXXXXXXXXX, dated April 13, 2015;
- u. Correspondence from the principal of the XXX to the XXX teaching staff, dated April 13, 2015;
- v. Written summary of an April 29, 2015 IEP team meeting held for the named student;
- w. Written summary of an August 10, 2015 IEP team meeting held for the named student;
- x. Correspondence from the complainant containing allegations of violations of the IDEA, received by the MSDE on May 7, 2015;
- y. The MSDE Student Testing Calendar for the 2014-2015 school year;
- z. The named student's report cards for the 2014-2015 school year;
- aa. Local School System Annual Service-Learning Experience Tally, dated June 16, 2015 and description of student service learning projects at the XXXX;
- bb. The JSE General Educational Development (GED) Checklists for Skills and Content in Reading/Language Arts, Writing, Mathematics, Social Studies, Science, and Technology;
- cc. The XXX school schedule in effect since April 1, 2014;
- dd. The *JSE Program of Studies – Course Offerings and Descriptions*;
- ee. Service Learning Plan from XXXXXXXX;
- ff. Records of textbook purchases;

- gg. The JSE Staff Day Agenda, dated October 14, 2015;
- hh. Sample of a physical education course that was provided to a student; and
- ii. Sample of a health course that was provided to a student.

**BACKGROUND:**

The named student is eighteen (18) years old, is identified as a student with a Specific Learning Disability under the IDEA, and has an IEP that requires the provision of special education instruction and related services (Docs. b, o, s, v, and w).

From August 8 to 19, 2014, the Maryland Department of Juvenile Services (DJS) placed the named student at the XXXXXXXXXXXXXXXX (XXXXXXXXXXXX) (Docs. a, c, and z).

From September 4, 2014 to April 7, 2015, the DJS placed the named student at the XXXXXXXXXXXX XXXXXX (XXXX). On April 7, 2015, the student returned to the community (Docs. a, c, f – j, m, p, x, and z).

**ALLEGATIONS #1 & #8:                      EDUCATION PROGRAM THAT MEETS  
STATE STANDARDS AT THE XXXXXX AND  
XXXXXXXXXXXXXX**

**FINDINGS OF FACTS:**

**Allegation #1a                              Access to Instruction in Core Courses – XXXXXX**

1. The Student Record Card 7 (SR 7) obtained by the XXXXX school staff upon the named student's entry to the facility reflects that he was being provided with instruction in American government, biology, algebra I, and office systems management classes (Doc. c).
2. The Student Record Card 3 (SR 3) for the named student reflects that he did not complete these classes prior to his placement at the XXXXX (Doc. a).
3. The SR 7 from the XXXXX indicates that, when the named student was placed at that facility on September 4, 2014, he was enrolled in an algebra I class. However, he was placed in a world history class instead of continuing to be provided with instruction in American government, he was placed in a conceptual physics class instead of continuing to be provided with instruction in biology, and he was placed in a career research and development class instead of continuing to be provided with instruction in office systems management (Doc. g).
4. A review of internal correspondence between the JSE staff and the XXXXXXXX school staff since October 2014 reflects that there was communication with the school staff about

ensuring that students would be enrolled in classes that would enable them to complete the core courses they were taking when transferred to the XXXX (Review of internal JSE correspondence).

5. A review of current student educational records indicates that students are being enrolled in classes that will enable them to complete the courses they were taking when transferred to the XXX (Review of student educational records).
6. The *JSE Program of Studies – Course Offerings and Descriptions* includes core courses in English, mathematics, science, social studies, and technology instruction. It does not include physical education, health, fine arts, and world languages. However, there are examples of such courses being provided when there were no other core courses that a student required (Docs. dd, hh, and ii).
7. Instruction is provided using a combination of textbooks and resources obtained by the teachers from the internet. The JSE has developed a uniform curriculum that is aligned with the College and Career Readiness Standards in order to ensure consistency of the coverage of material in each course provided at all DJS facilities. This curriculum was distributed to all JSE teachers at a staff meeting held on October 14, 2015. The JSE has also ordered text books to be used uniformly in all DJS facilities (Docs. ff, gg, and review of text books and resource materials and the JSE curriculum maps for core subject areas).
8. The XXX school schedule in effect in September 2014 reflects that the school day began at 8:00 a.m. and ended at 2:30 p.m. It also reflects that each day there were four (4) periods in which instruction was provided for one and one-half (1.5) hours for each period. There was one (1) period of English, one (1) period of math, one (1) period in which social studies and science were provided on alternate days, one (1) period of career and technology education, and one (1) period of career, research, and development. There was also a one-half (.5) hour period for lunch (Doc. cc).
9. Since January 29, 2015, the XXXXX school schedule reflects that the school day begins at 8:00 a.m. and ends at 3:30 p.m., with a one and one-half (1.5) hour period for lunch and teacher planning (Doc. cc).
10. The current XXXX school schedule reflects that there is one (1) period of English, one (1) period of math, one (1) period in which science and career and technology education are provided on alternate days, and one (1) period in which social studies and career, research, and development are provided on alternate days (Doc. cc).
11. Students participating in career and technology education can be awarded certifications in the areas of study to assist them in obtaining employment upon their return to the community. Areas of certification include Network Cabling Specialists or Voice Communication Professions, Financial Literacy, Medical Billing and Coding, National



Flagger (controlling traffic on a construction site), IC3 (internet and computing), National Retail Federations, OSHA 10 (orientation and safety program for the construction industry), and ServSafe (food service safety practices) (Docs. d and dd).

12. A review of student educational records reflects that the XXXX school schedule allowed enough instruction in science and social studies for some students to earn only one-half (.5) of a credit in those courses during the school year. However, the records also reflect that students have received one-half (.5) of a credit in courses from schools in their communities as well. The JSE staff report that they believe that it is important to provide instruction in Career and Technology Education courses so that students can develop the skills needed to obtain employment when they return to their communities, even if it means that they can earn only partial credit in science and social studies (Review of educational records).
13. The JSE does not award less than one-half (.5) of a credit for work completed in a course. Therefore, if a student has only completed a quarter of the work to earn a credit in a course, the student will not be awarded partial credit for the course (Review of educational records and interviews with the JSE staff).

**Allegation #8a          Access to Instruction in Core Courses - XXXXXXXXX**

14. On Friday, August 8, 2014, the DJS transferred the named student from the XXXXXXXXXX XXXXXXXXXXXXXXXX (XXXXXX) to XXXXXXXXX (Docs. a and c).
15. A review of the named student's educational record reflects that, on Monday, August 11, 2014, the XXXXXX staff began requesting the student's educational record from the XXXXXXXXX (Review of the named student's educational record).
16. On August 12, 2014, the BCJJC provided XXXXXX with documents from the named student's educational record, including assessment data and a summary of the IEP (Review of the named student's educational record).
17. On August 14, 2014, the XXXXX provided XXXXXX with the named student's complete IEP. However, the XXXXX did not provide XXXXXX with information that would ensure that the student was placed in appropriate courses. Therefore, the XXXXXXXXX staff placed the named student in general ninth (9<sup>th</sup>) grade classes while attempting to obtain this information. This information had not been received by XXXXXXXXXXXX by the time that the DJS transferred the student again to the XXXXXXXXXXXXXXXXXXXX on August 19, 2014 (Review of the named student's educational record).
18. A review of the educational records of other students placed at XXXXXXXXX since August 8, 2014 reflect that, upon arrival at XXXXX, the students were enrolled in classes in which they had been receiving instruction in their previous placements (Review of student educational records).

19. On October 14, 2015, the JSE held a staff meeting for school staff from all of the DJS facilities. At this meeting, forms were distributed to be used uniformly among the JSE schools in order to ensure the appropriate transfer of student educational records (Doc. gg).

**Allegation #1b Opportunity to Obtain Student Service Requirements - XXXX**

20. While there was a service learning plan at the XXX while the named student was placed at that facility, there is no documentation that students were able to earn service learning hours required in order to graduate with a Maryland High School Diploma prior to March 2015 (Doc. aa and interviews with the XXXX school staff).
21. Since March 2015, students placed at the XXXX have been provided with the opportunity to earn service learning hours through projects that have been included in the instruction in English, science, and career technology courses. An example is the Aquaponics Program, in which students participate through the science class. During class, students are involved in an aquaculture project in which they plant flowers and vegetables, care for fish, and learn about the ecosystem they create (Doc. aa, tour of the Aquaponics Program, and review of educational records).

**Allegation #8b Opportunity to Obtain Student Service Requirements - XXXXXXXXX**

22. Students placed at the DJS Youth Camps, including XXXXX, have not consistently been provided with service learning opportunities since July 2013. There is a Service Learning Plan that describes the activities in which students can participate at XXXXXX in order to earn service learning hours. The Plan describes activities such as a greeting card campaign to American soldiers, harvesting in local orchards and assisting with the unloading of food and filling of boxes for a local community action food bank (Doc. ee).
23. The JSE staff have included the topic of service learning opportunities on its agenda for meetings with the DJS staff (Doc. l).

**Allegation #1c Opportunity to Prepare for General Educational Development (GED) Testing - XXXX**

24. There is evidence that, since July 2014, students placed at the XXXX have been provided with the opportunity to prepare for the GED test as described below.
  - The JSE compared the College and Career Readiness Standards against the material covered on the GED test and developed a list of the skills that are tested within each course. Students consult with the guidance counselor and when ready, are provided with the opportunity to take an on-line "GED Ready Test" that provides information about whether they are likely to pass each area tested

and the specific skills they need to focus on to improve their scores (Doc. bb and review of GED materials).

- While instruction continues to be provided in all academic areas of the general curriculum, the teachers are provided with instructional booklets to correspond to work books for students to engage in practice activities in the specific areas of identified need for improvement. Therefore, the students who choose not to take the GED test will be able to continue to make progress in the general curriculum (Review of on-line results of the GED Ready Test administered since July 2014, instructional booklets and work books).

25. A review of the records of students who have taken the GED Ready Test reflects that the named student took the test, but did not achieve a score that reflected that he would be successful in taking the GED test (Review of GED Ready test results).

**Allegation #8c Opportunity to Prepare for General Educational Development (GED) Testing - XXXXXXXX**

26. There is evidence that students placed at XXXXXXXX are also provided with the opportunity to take the GED Ready Test and that there are instructional booklets and student work books to allow them to engage in practice activities in the specific areas of identified need for improvement. The students take a paper version of the GED Ready Test, which is submitted by mail for analysis (Review of lists of students who have taken the GED Ready Test and instructional booklets and work books).

**Allegation #1d Provision of Special Education Instruction from Teachers Holding Maryland Certification in the Areas of Instruction Provided - XXXXX**

27. During the period of time that the named student was placed at the XXXX, there was not consistently an English teacher who was certified in that area of instruction. There is currently a certified English teacher at the XXXX (Review of staffing documents).

28. There was, and continues to be, a teacher who holds certification in social studies and a certified special education teacher at the XXX (Review of staffing documents).

29. At the time that the named student was placed at the XXX on September 4, 2014, there were no math or science teachers who were certified in those areas of instruction. There has been a science teacher at the XXX, who obtained full certification in that area of instruction on August 1, 2015 (Review of staffing documents).

30. Ongoing recruitment efforts have been made and interviews have been conducted since July 10, 2014 in order to hire additional JSE teaching staff at the DJS facilities throughout the State. A math teacher who was hired subsequently left the XXX on

August 21, 2015, and an instructional assistant is providing instruction in that area until another teacher can be recruited (Review of staffing documents and <http://www.jobaps.com/MD>).

31. There is no evidence of supervision of noncertified teachers by certified teachers prior to February 11, 2015. There is documentation that the XXXX principal is conducting observations in the classrooms of those teachers who do not hold certifications in the areas in which they provide instruction (Docs. t, u, and review of staffing documents).
32. There is no documentation that the special education teacher who provides instruction in the separate special education classroom is either certified or supervised by certified staff in each content area of instruction that is provided (Review of staffing documents).

**Allegation #8d            Provision of Special Education Instruction from Teachers Holding Maryland Certification in the Areas of Instruction Provided - XXXXXX**

33. There have been certified math and special education teachers at XXXXXXXXXXXX since August 8, 2014 (Review of staffing documents).
34. The teachers who have provided instruction in English, social studies, and science since August 8, 2014 have not been certified in the content areas in which they provide instruction, and there is no evidence of supervision of noncertified teachers by certified teachers prior to February 26, 2015 (Review of staffing documents).

**LEGAL FRAMEWORK:**

The implementing regulations of the IDEA explain that the federal requirements related to the education of students with disabilities apply to all political subdivisions of a State that are involved in the education of students with disabilities, including juvenile correctional facilities.

These regulations require that each educational program for students with disabilities meet the educational standards of the State Education Agency (SEA) (34 CFR §§300.2 and .149).

The IDEA provides for exceptions to these requirements under circumstances where there is a bona fide security or compelling penological interest that cannot otherwise be accommodated, but only in the case of students who are convicted as adults and incarcerated in adult prisons [emphasis added] (34 CFR §300.324).

In order to implement the State law mandating the development and implementation of educational programs in the DJS residential facilities, regulations were promulgated requiring the JSE to provide a comprehensive education program for youth in these facilities in order to meet their special needs and circumstances (Ann. Code of Md. Ed. Art. §§22-306 and COMAR 13A.05.11).

## **DISCUSSION/CONCLUSIONS:**

### **ACCESS TO INSTRUCTION IN CORE COURSES**

The IDEA requires that a Free Appropriate Public Education (FAPE) be provided to students with disabilities through an IEP that meets the needs that result from the disability and enable them to be involved in and make progress in the general curriculum (34 CFR §§300.101, .103, .320, and .323). Therefore, the JSE must ensure that students in each DJS facility have access to instruction to allow them to achieve credit requirements and assessments necessary to progress towards the State standards for graduation from a public high school (COMAR 13A.05.11.03).

To be awarded a Maryland High School Diploma, a student must have earned a minimum of 21 credits, including core credits in English, fine arts, mathematics, physical education, health education, science, social studies, and technology education. Core credits must also be earned in world language or American Sign Language, and in advanced technology education or a career and technology program (COMAR 13A.03.02.03).

The term “credit” means the successful demonstration of a specified unit of study (COMAR 13A.03.02.02). Credit instruction must meet the aggregate time requirements specified by each local school system (COMAR 13A.03.02.04).

In order to provide students with sufficient time to meet these requirements, the JSE must ensure that its schools operate at least 220 school days per year and a minimum of 1,320 school hours during a 12-month period. The JSE is required to have a written schedule for each school that states that the beginning and end of the 6-hour school day and the specific time periods during the day when the areas of instruction are implemented (COMAR 13A.05.11.04).

Student records provide information about a student’s academic performance; thus, the proper maintenance of these records is necessary to ensure that accurate information is available to plan for a student’s education. All student educational records are to be maintained in accordance with the Family Educational Rights and Privacy Act (FERPA) (34 CFR §§300.610 - .627).

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

The *Maryland Student Records System Manual* requires that when a student transfers to another school, the sending school provide the receiving school with data using a Student Record Card 7 (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 information about the credits earned by each student, which may be recorded on the Student Record Card 3 (SR 3) (*Maryland Student Records System Manual*, 2011).

Within two (2) days after receiving notice that a student in State-supervised care 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 record to the public agency making the request (COMAR 13A.08.07.03).

The *JSE Special Education Policies and Procedures* states that school staff must request the 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 (Doc. d).

In this case, the complainant alleges that the JSE does not offer students the opportunity to take core courses such as physical education, health, fine arts, and world languages or American Sign Language (Doc x). Based on the Finding of Fact #6, the MSDE finds that while the JSE does not regularly provide instruction in all of the core courses, there is evidence that instruction has been provided in courses not usually offered when a student required the course. Therefore, this office does not find that a violation occurred with respect to this aspect of the allegation.

The complainant further alleges that the students are not provided with a sufficient amount of instruction in each course to allow them to earn credit in those courses, and that students are not permitted to earn less than one-half (.5) credit in courses (Doc. x). Based on the Findings of Facts #8 - #13, the MSDE finds that there is documentation that students are provided with six (6) hours of instruction per day, consistent with State standards. Because there are no State standards that require that students be permitted to earn less than one-half (.5) credit for a course, this office does not find that a violation occurred with respect to this aspect of the allegation.

Finally, the complainant alleges that students, who are often transferred among the different DJS facilities, are not able to complete credit requirements that they began earning in one facility when they are moved to another facility due to the lack of access to instruction in the same courses in each facility. The complainant asserts that the teachers do not have access to the resources needed to ensure that a "consistent curriculum" that is aligned with the College and Career Readiness Standards is being provided in the DJS facilities (Doc. x).

#### **Allegation #1a – XXXX**

Based on the Findings of Facts #1 - #3, the MSDE finds that the JSE did not ensure that the student was able to continue to take core courses needed to progress through the general curriculum when he was placed by the DJS at the XXX, and that a violation occurred.

Based on the Findings of Facts #4, #5, and #7, the MSDE finds that the JSE has taken steps to ensure that students are enrolled in courses at the XXX that they need to complete in order to progress through the general curriculum. Therefore, no school-based corrective action is required with respect to the violation.

**Allegation#8a - XXXXXXXXX**

Based on the Findings of Facts #14 - #17, the MSDE finds that the JSE did not ensure that the school staff at the BCJJC provided the school staff at XXXXXXXX with the information from the student's educational record that was needed to ensure that he was enrolled in core courses he required. Therefore, this office finds that a violation occurred with respect to this aspect of the allegation because of lack of appropriate transfer of the student's records and not because of a lack of the availability of core courses at XXXXXXXX.

Based on the Findings of Facts #18 and #19, the MSDE finds that students are being enrolled in courses they need to progress through the general curriculum and the JSE is taking steps to ensure the future appropriate transfer of educational records. Therefore, no school-based corrective action is required with respect to the violation.

**OPPORTUNITY TO OBTAIN STUDENT SERVICE HOURS**

To be awarded a Maryland High School Diploma, a student must have completed either 75 hours of student service that includes preparation, action, and reflection components, or a locally designed program in student service that has been approved by the State Superintendent of Schools (COMAR 13A.03.02.05).

In this case, the complainant alleges that students who are placed at the XXXXX and XXXXX are not provided with the opportunity to work towards obtaining student service requirements necessary for them to work towards obtaining a Maryland High School Diploma (Doc. x).

**Allegation #1b - XXX**

Based on the Findings of Facts #20 and #21, the MSDE finds that there is no evidence that the named student was provided with the opportunity to earn service learning hours and that a violation occurred.

Based on the Findings of Facts #20 and #21, the MSDE finds that the students placed at the XXX have been able to earn service learning hours since March 2015. Therefore, no school-based corrective action is required with respect to the violation.

**Allegation #8b - XXXXX**

Based on the Findings of Facts #22 and #23, the MSDE finds that the students placed at XXXXXXXX, including the named student, have not consistently been provided with the opportunity to earn service learning hours and that a violation occurred.

**OPPORTUNITY TO PREPARE FOR THE GENERAL EDUCATIONAL DEVELOPMENT (GED) TESTING**

A Maryland High School Diploma by Examination may be awarded for satisfactory performance on approved general educational development (GED) tests if a student meets specific requirements (COMAR 13A.03.02.09). The JSE is required ensure that students in each DJS facility have access to instruction to prepare them to obtain a Maryland High School Diploma by Examination (COMAR 13A.05.11.03).

There are various resources available to assist students in preparing to take the GED test. These include books and DVDs offering in-depth review and study tips, Maryland Online GED Preparation Classes offered by the Maryland Department of Labor, Licensing and Regulation and the United States Department of Education, and various websites that offer practice tests ([www.prattlibrary.org](http://www.prattlibrary.org)).

**Allegation #1c - XXXX**

In this case, the complainant alleges that students with disabilities placed at the XXXX who wish to take the GED test do not have access to materials and instruction to assist them in preparing for the test (Doc. x). Based on the Findings of Facts #24 and #25, the MSDE finds that the documentation does not support the allegation. Therefore, this office does not find that a violation occurred with respect to this aspect of the allegation.

**Allegation #8c - XXXXXXXX**

Based on the Finding of Fact #26, the MSDE finds that there is evidence that students placed by the DJS at XXXXXXXX have access to materials to prepare for the GED test. Therefore, this office does not find that a violation occurred with respect to this aspect of the allegation.

**PROVISION OF SPECIAL EDUCATION INSTRUCTION FROM TEACHERS HOLDING MARYLAND CERTIFICATION IN THE AREAS OF INSTRUCTION**

The IDEA requires that the SEA establish and maintain qualifications to ensure that personnel necessary to carry out the requirements of the IDEA are appropriately and adequately prepared and trained, including those personnel who have the content knowledge and skills to serve students with disabilities. These qualifications must be designed to ensure that highly qualified personnel provide special education and related services to students with disabilities. However,



this requirement does not create a right of action on behalf of an individual student or class of students for the lack of the provision of instruction by an individual who is not highly qualified (34 CFR §§300.18, .101, .156, .323).

The JSE is required to ensure that instruction is provided by personnel with valid Maryland Educator Certificates so that educational staff possess the minimum essential knowledge and skills needed to achieve outcomes for public education and maintain competent practice through career-long engagement with their content area (COMAR 13A.05.11.07 and 13A.12.01.01).

The *JSE Special Education Policy and Procedures* states that, in the event that a content area teacher is not available to provide instruction for an extended period of time, a highly qualified teacher will provide oversight to the staff designated to provide instruction. This involves “regular collaborative planning” with the staff providing instruction and “periodic classroom observations by the principal to ensure instruction is aligned with College and Career Ready Standards” (Doc. ).

In this case, the complainant acknowledges the challenges faced by the JSE in recruiting and maintaining certified staff. The complainant asserts that, although the public agency has developed procedures to strengthen recruitment efforts and to obtain substitute teachers who are supervised by certified teachers while vacancies are being filled, these procedures are not being implemented (Doc. x).

#### **Allegation #1d – XXXX**

Based on the Findings of Facts #27 - #32, the MSDE finds that the JSE has not ensured that all of the teachers at the XXX have been certified in the areas in which they provide instruction. Based on the Finding of Fact #31, the MSDE further finds that the JSE did not ensure that non-certified general education teachers were supervised by teachers holding certification prior to February 2015, consistent with its procedures.

Based on the Finding of Fact #31, the MSDE finds that the principal conducts observations in the classrooms of non-certified teachers, in accordance with the JSE procedures. However, based on the Finding of Fact #32, the MSDE finds that the JSE has not ensured that the special education teacher is either certified or supervised by a certified teacher in each area of instruction provided. Therefore, this office finds that a violation occurred.

#### **Allegation #8d - XXXXXX**

Based on the Findings of Facts #33 and #34, the MSDE finds that the JSE has not ensured that all of the teachers at XXXXX have been certified in the areas in which they provide instruction.

Based on those Findings of Facts, the MSDE further finds that the JSE did not ensure that teachers who do not hold certification were supervised by teachers holding certification in those

areas prior to February 2015, consistent with its procedures. Therefore, this office finds that a violation occurred.

Notwithstanding the violations identified, because the teacher qualification requirements do not create a right of action on behalf of an individual student or class of students, no student-specific corrective action is required to remediate them.

**ALLEGATIONS #2 AND #7      PROVISION OF THE REQUIRED AMOUNT OF  
SPECIAL EDUCATION INSTRUCTION BY THE  
SERVICE PROVIDER AND IN THE PLACEMENT  
REQUIRED BY THE IEP AT THE XXXX AND  
XXXXXXXXXX**

**FINDINGS OF FACTS:**

**Provision of Special Education Instruction at XXXXXXXX**

35. The DJS placed the student at XXXXXXXX from August 8 to 19, 2014. During that period of time, the student's IEP required the provision of twenty (20) hours of special education instruction per week in English, math, social studies, and science from a special education teacher in a separate special education classroom (Docs. a - c).
36. At XXXXXXXXXX, there is one (1) special education teacher. XXXXXXXX does not have sufficient special education staff to ensure that a student is provided with the amount of special education instruction in a separate special education classroom that was required by the named student while providing supports required by students in the general education classroom (Review of staffing documents and the school schedule).

**Provision of Special Education Instruction at the XXXX – Safety Issues**

37. In its third quarter 2014 report to the Maryland Legislature, the Maryland Office of the Attorney General Juvenile Justice Monitoring Unit made a recommendation that the JSE and the DJS "enter into close collaboration so that treatment and education services and goals are closely aligned and behavioral issues can be addressed on an individual basis using a therapeutic approach." This recommendation was made as a result of concerns raised following an incident in which students at the XXXX were not permitted to leave the residence to obtain education instruction for up to eight (8) days in order to restore safety at the facility after the students became disruptive (Doc. n)
38. As a result of the incident that took place, all students were withheld from school at the XXXX on October 10, 2014. The correspondence between the JSE and DJS staff describes a plan for the return of students with disabilities to school as follows based on student compliance with the DJS behavioral requirements:

- October 11-12, 2014 – Weekend; school closed.
- October 13, 2014 – Holiday; school closed.
- October 14, 2014 – All students provided with one half (.5) day of school.
- October 15, 2014 – Students in the XXXXXX in school for a full day and the rest of the students in school for one half (.5) day.
- October 16, 2014 – Professional development day; school closed.
- October 17, 2014 - Students in the XXXXXX in school for a full day and the rest of the students in school for one half (.5) day.
- October 20, 2014 - Students in XXXXX and XXXXX in school for a full day and the rest of the students in school for one half (.5) day.
- October 21, 2014 - Students in XXXXX and XXXXX in school for a full day and the rest of the students in school for one half (.5) day.
- October 22, 2014 – Students in XXXXX, XXXXX, and XXXXXX in school for a full day and the rest of the students in school for one half (.5) day.
- October 23, 2014 – Students in all but XXXXXXXX in school for a full day; students in XXXXXXXX in school for one half (.5) day.
- October 24, 2014 – Students in all but XXXXXXXX in school for a full day; students in XXXXXXXX in school for one half (.5) day.
- October 25-26, 2014 – Weekend; school closed.
- October 27, 2014 – Students in XXXXXXXX to return to school for a full day (Doc. k and review of calendar).

39. At the MSDE site visit to the XXX, the MSDE staff observed that the DJS has established an Intensive Services Unit (ISU). This is a dedicated cottage that is a separate living unit for six (6) youth, where a more intensive level of care is provided to those youth displaying special mental health and significant behavioral problems. The ISU is designed to provide short-term intensive interventions to assist the youth in being able to successfully return to the general population (Doc. r and tour of the ISU).
40. The XXX school schedule in effect since January 29, 2015 reflects that there are general education teachers scheduled to provide instruction in the ISU for each class period of the day (Doc. cc).
41. The DJS staff report that, since the October 2014 incident, there have been no incidents that required students to remain in their residences when scheduled to be attending school, and there is no information or documentation indicating otherwise. There is also no documentation that the student was removed from school prior to October 2014 (Review of the student's educational record and interview with the DJS staff).

### **Provision of Special Education Instruction at the XXXX – Staffing Issues**

42. The DJS placed the named student at the XXXX from September 4, 2014 until April 7, 2015. From the time the student was placed at the XXX until April 3, 2015, his IEP required the provision of special education instruction by a special education teacher in a separate special education classroom for English, math, science, and social studies<sup>2</sup> (Docs. b and s).
43. The XXXX school schedule, effective September 15, 2014, reflects that there was a separate special education classroom and a special education teacher assigned to provide special education instruction in English, math, social studies, and science in this setting (Doc. cc).
44. The named student's report card for September 2014 to December 2014 reflects that he was provided with instruction from teachers listed on the XXXX school schedule as providing instruction in the general education classroom. The report card also reflects that the student was provided with instruction from the teacher assigned to provide instruction in the separate special education classroom for English, math, and science. However, the report card does not reflect that instruction was provided in social studies by the teacher assigned to the separate special education classroom (Docs. m and cc).
45. In January 2015, the school staff began maintaining a log of the provision of services to students in the separate special education classroom. The log reflects that, from January 2015 to March 2015, the student received special education instruction in this setting in the areas of English, math, and science. The log does not reflect that the student was provided with special education instruction in social studies in this setting, as was required by the IEP until it was revised on April 3, 2015 (Docs. b, q, and s).
46. A review of student IEPs and of the log of the provision of services to other students in the separate special education classroom since January 2015 reflects that some students have been provided with less instruction in the separate special education classroom than required by the IEP, and that others have been provided with more instruction in that setting than required by the IEP (Review of Out of General Education (OGE) logs and review of educational records).
47. The XXX school schedule in effect since July 6, 2015 reflects the following: each day there are four (4) periods in which instruction is provided for one and one-half (1.5) hours for each period. There is one (1) period of English, one (1) period of math, one (1) period in which science and career and technology education are provided on alternate

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<sup>2</sup> On April 3, 2015, the IEP team revised the IEP to require that the named student be provided with special education instruction in English and math by a special education teacher in a separate special education classroom and in the remaining academic areas in the general education classroom by a general or special education teacher (Doc. s).

days, and one (1) period in which social studies and career, research, and development are provided on alternate days. In addition, the schedule reflects that during the first (1<sup>st</sup>) and fourth (4<sup>th</sup>) period of each day, special education instruction is provided to some students in a separate special education classroom. The remaining two (2) periods are spent by the special education teacher providing assistance in the general education classroom or the ISU, when needed, or completing administrative tasks, when not needed in the classroom (Doc. cc).

48. During the MSDE site visit that was conducted, the MSDE staff observed that there is a classroom at the XXX, which is designated as a separate special education classroom, and that a special education teacher is assigned to provide special education instruction in that setting. The XXX also shares another special education teacher with the XXXXXXXXX XXXXXXXXXXXXXXXX (XXXXXXX). This staff member assists with the provision of special education in the general education classroom or the ISU, when needed (Doc. cc and observation of the separate special education classroom).
49. A review of the internal correspondence between the JSE staff and the XXX school staff since March 2014 reflects that progressive steps were taken by the JSE staff to ensure improvements in the utilization of teaching staff at the XXX (Review of internal JSE correspondence and staffing records).
50. Ongoing recruitment efforts have been made and interview panels held since December 10, 2014 in order to hire additional special education teaching staff in the DJS facilities throughout the State (Review of staffing documents and <https://www.jobaps.com/MD>).

### **DISCUSSION/CONCLUSIONS:**

Each public agency must ensure that students are provided with the special education and related services in the educational placement required by the IEP (34 CFR §§300.101 and .323 and COMAR 13A.05.11.06).

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

As stated above, federal requirements related to the education of students with disabilities apply to all political subdivisions of a State that are involved in the education of students with disabilities, including juvenile correctional facilities (34 CFR §§300.2 and .149).

The *JSE Special Education Policy and Procedures* states that, if the DJS withholds a student from school for more than five (5) days due to safety and security reasons, the JSE Lead Special Education Teacher will, on the sixth (6<sup>th</sup>) day, schedule an IEP team meeting. At that meeting, the IEP team will determine instructional services to be provided to the extent possible, review and revise, as appropriate, the IEP based on the student's individual needs, determine the number of hours of instruction required to provide the student with a FAPE while being held from attending school, and develop a plan for returning the student to school. Upon the student's return to school, the IEP team will again meet to review and revise, as appropriate, the IEP (Doc. d).

A student with a disability may be disciplinarily removed from the current educational placement, to the extent that removal is applied to students without disabilities, for up to ten (10) school days for each incident that results in disciplinary removal. Once a change in educational placement<sup>3</sup> occurs for a student with a disability as a result of a disciplinary removal, State and federal regulations require the provision of specific protections to the student (34 CFR §300.530 and COMAR 13A.08.03).

In this case, the complainant alleges that, due to a lack of adequate staff, students are not provided with the special education instruction by the staff and in the educational placement required by each student's IEP. The complainant also alleges that students have been removed from school without the provision of the IDEA disciplinary protections. The complainant asserts that, while an Intensive Services Unit has been designated to provide enhanced services for disruptive students, the JSE lacks sufficient staff to provide special education instruction when students are assigned to the Unit (Doc. x).

**Allegation #2                      Provision of Special Education Instruction at the XXXX**

Based on the Findings of Facts #42 - #50, the MSDE finds that, while the JSE has been taking steps to obtain additional special education teaching staff, there is no documentation that the student and other students at the XXX have consistently been provided with the special education instruction from a special education teacher in a separate special education classroom as required by the IEP. Therefore, this office finds that a violation occurred with respect to this aspect of the allegation.

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<sup>3</sup> A disciplinary removal constitutes a change in educational placement if the student is removed for more than ten (10) consecutive school days or ten (10) cumulative school days in a school year if those removals constitute a pattern of removal of the student (34 CFR §300.530).

Based on the Findings of Facts #37 and #41, the MSDE finds that students with disabilities placed at the XXX missed up to five (5) days of school as a result of safety procedures that were implemented at the XXX in October 2014, and there is no documentation that the named student was removed in excess of ten (10) school days during the school year. Thus, the JSE was not required to convene IEP team meetings to determine an impact on the students, in accordance with its procedures or to provide IDEA disciplinary protections. Therefore, no violation is found with respect to this aspect of the allegation.

**Allegation #7                    Provision of Special Education Instruction at XXXXXXXX**

Based on the Findings of Facts #35, #36, and #50, the MSDE finds that, while the JSE is taking steps to obtain additional special education teaching staff, there is insufficient staffing at XXXXXXXX to provide students with special education instruction from a special education teacher in a separate special education classroom throughout the school day, as was required by the named student. Therefore, this office finds that a violation occurred with respect to the allegation.

**ALLEGATION #3                    PARTICIPATION IN ASSESSMENTS**

**FINDINGS OF FACTS:**

51. The named student's SR 7 card states that, while placed at the XXXXXXXX between September 4, 2014 and April 7, 2015, the student completed classes in algebra I, conceptual physics, and world history (Doc. g).
52. The MSDE Student Testing Calendar reflects that, during that time period, High School Assessments (HSAs) were administered in government, English, biology, and algebra/data analysis in October 2014 and January 2015 (Doc. y).
53. Information in the named student's educational record reflects that he took the algebra HSA while placed at the XXXXXXXX and received a score of 334 (Review of the named student's educational record).
54. There is documentation that twenty-nine (29) students took HSAs at the XXXXXX after completing courses in algebra, English, biology during 2014. Seven (7) students took HSAs in these areas to date during 2015 (Review of HSA testing at the XXXX).
55. A review of a Bill of Lading, dated March 20, 2015 for the delivery of the Partnership for Assessment of Readiness for College and Careers (PARCC) assessment results to the MSDE documents that students at the XXXXXX participated in this Statewide assessment (Review of Bill of Lading).

## **DISCUSSION/CONCLUSIONS:**

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

In addition to earning the required core credits in order to receive a Maryland High School Diploma, students must receive a passing score on the Maryland High School Assessments for algebra, biology, English, and government or satisfactorily complete the requirements of the Bridge Plan for Academic Validation (COMAR 13A.03.02.09).

In this case, the complainant alleges that the students at the XXXX were not included in the Statewide assessments during the 2014-2015 school year (Doc. x). Based on the Findings of Facts #51 - #55, the MSDE finds that the documentation does not support the allegation. Therefore, a violation is not found with respect to this allegation.

## **ALLEGATION #4                      EDUCATIONAL PLACEMENT DECISIONS**

### **FINDINGS OF FACTS:**

56. On April 3, 2015, the IEP team revised the named student's IEP to require that the student be provided with eleven (11) hours and forty (40) minutes of special education instruction per week in English and math in a separate special education classroom and seventeen (17) hours and fifty-five (55) minutes per week of special education instruction in the remaining academic areas in the general education classroom. The previous IEP had required the provision of twenty (20) hours per week of special education instruction in English, math, science, and social studies in the separate special education classroom (Doc. s).
57. The IEP team documented that the named student's mother participated in the April 3, 2015 IEP team meeting by telephone, and did not raise any concerns. The team also documented that the student participated in the meeting. The documentation of the meeting reflects that the team considered information from the school staff that the student was not consistently accepting instruction in the separate special education classroom (Doc. s).
58. The IEP team documented that, although the student continued to struggle with academics, based on his request for more instruction in the general education classroom, it decided to begin providing special education instruction in science, social studies, and career technology in a general education classroom. However, the team decided that the student continues to require the additional supports of a separate special education classroom for math and English due the belief that he would be unable to comprehend content and make progress in those areas in the general education environment (Doc. s).



59. A review of student educational records indicates that the IEP for students who require special education instruction in a separate special education classroom reflect that they receive varying amounts of instruction in that setting. One (1) other student's record indicates that the placement was changed from a separate special education classroom to a general education classroom based on the student's refusal to receive instruction in a separate special education setting and based on his promise to accept the support provided in the general education classroom (Review of educational records).

### **DISCUSSION/CONCLUSIONS:**

To the maximum extent appropriate, students with disabilities are to be educated with nondisabled students. Removal from the regular educational environment may occur only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. When determining the Least Restrictive Environment (LRE) in which the IEP can be implemented, consideration must be given to any potential harmful effect on the student or on the quality of the services that the student needs (34 CFR §§300.114 - .116).

The public agency must also ensure that the educational placement is made by the IEP team and is based on the IEP. The educational placement may not be based solely on the factors such as the configuration of the service delivery system, availability of staff, or administrative convenience, and the public agency must ensure that a student is not removed from age-appropriate regular classrooms solely because of needed modifications in the general education curriculum (34 CFR §300.116, COMAR 13A.05.01.10, and *Letter to Clay*, United States Department of Education, Office of Special Education Programs, 23 IDELR 341, May 17, 1995).

In this case, the complainant alleges that the IEP is revised based on the availability of staff and other resources and not on the individual students' needs (Doc. x and interviews with the complainant). Based on the Findings of Facts #56 - #59, the MSDE finds that the documentation does not support the allegation. Therefore, this office does not find that a violation occurred.

### **ALLEGATION #5                      PARENT PARTICIPATION IN THE APRIL 29, 2015 IEP TEAM MEETING**

### **FINDING OF FACT:**

60. On April 29, 2015, an IEP team meeting was held for the named student. The written summary of the April 29, 2015 IEP team meeting states that on April 24, 2015, the school staff spoke with the named student's parent by telephone and she indicated that she did not want to participate in the IEP team meeting. However, there is no documentation in the communication log that telephone contact was made with the parent about participating in the meeting and no documentation that a written invitation was sent to the parent within the required timelines (Doc. v and review of communication log).

**DISCUSSION/CONCLUSIONS:**

As stated above, the public agency is required to take steps to ensure that the student's parents are afforded the opportunity to participate in each IEP team meeting (34 CFR §300.322).

If a parent cannot attend an IEP team meeting, the public agency must use other methods to ensure parent participation, including individual or conference telephone calls. A meeting may be conducted without a parent in attendance only if the public agency is unable to convince the parents to attend. In such a case, the public agency must keep a record of its attempts to arrange a mutually agreed on time and place, such as detailed records of telephone calls made or attempted and the results of those calls, copies of correspondence sent to the parents and any responses received, and detailed records of visits made to the parent's home or placement of employment and the results of those visits (34 CFR §300.322).

The *JSE Policies and Procedures* states that written notice of IEP team meetings are sent to parents "at least ten days before the meeting." It also states that the school staff are required to document their efforts to find a mutually convenient date for IEP team meetings as well as their efforts to involve the parent in each IEP team meeting, including by alternative means if needed, in a communication or activity log that is maintained in each student's educational record (Doc. e).

In this case, the complainant asserts that the named student's mother was contacted by telephone about an April 29, 2015 IEP team meeting, and she informed the school staff that she was not available on that date. The complainant alleges that no attempts were made to find a mutually convenient date and that no other methods were used to ensure the mother's participation, other than a telephone call to her during the IEP team meeting when she was not at home (Doc. x).

Based on the Finding of Fact #60, the MSDE finds that there is no documentation that the parent was provided with a written invitation to the IEP team meeting or that efforts were made to schedule the meeting at a mutually convenient time. Therefore, this office finds that a violation occurred.

**ALLEGATIONS #6 AND #9:**

**MAINTENANCE AND TRANSFER OF  
STUDENT EDUCATIONAL RECORDS**

**FINDINGS OF FACTS**

Maintenance of Records – XXX

61. The SR 7 card completed for the named student, who was placed at the XXXX from September 4, 2014 to April 7, 2015, states that he "finished" a world history class in

which he was enrolled at the facility. However, the SR 3 card completed by the XXXXXX states that the student earned only one-half (.5) of a credit for the course (Doc. g).

62. A review of internal correspondence between the JSE staff and the XXXX staff since August 2014 reflects that the JSE staff have been taking progressive steps with the school staff to improve the accuracy of student records (Review of internal JSE correspondence).
63. While the student exited the XXXX on April 7, 2015, the SR 7 card was not completed until April 20, 2015 (Doc. g).

**Transfer of Records - XXXXXXXX**

64. On August 19, 2014, the XXXXXXXXXXXXXXXXXXXXXXXXXX requested the student's educational record from XXXXXXXX (Review of communication logs).
65. On August 20, 2014, XXXXXXXX provided the record to the XXXXXXXXXXXXXXXXXX XXXXXXXX, and was informed by the school staff at that facility that the student was being transferred back to the BCJJC the following day. As a result, the XXXXXXXXXX staff also provided the student's educational record to the BCJJC on that date (Review of the student's educational record).

**DISCUSSION/CONCLUSIONS:**

As stated above, when a student transfers to a new school, the sending school must share with the receiving school information, including the courses in which the student was enrolled. When a student transfers to a State agency, foster care, or Correctional Education facility, original student records must be sent in their entirety within three (3) school days of the receipt of the request (COMAR 13A.08.07.03 and *Maryland Student Records System Manual*, 2011, 2016).

The complainant alleges that the JSE did not ensure that accurate student transcripts are provided in a timely manner when students are transferred from one DJS facility to another (Doc. x).

**Allegation #6 Maintenance of Records –XXXX**

Based on the Findings of Facts #61 - #63, the MSDE finds that, although the JSE has been taking steps to improve the accuracy of educational records, the student's educational record was not maintained in an accurate manner and was not transferred in a timely manner in order to ensure that the student was placed in core courses he required when he transferred from the XXXXXX. Therefore, this office finds that a violation occurred.

**Allegation #9                      Transfer of Records - XXXXXXXX**

Based on the Findings of Facts #64 and #65, the MSDE finds that there is documentation that the school staff at XXXXXXXX responded to the request for records in a timely manner. Therefore, this office does not find that a violation occurred with respect to the allegation.

**ALLEGATION #10                      PROVISION OF SPEECH/LANGUAGE SERVICES**

**FINDINGS OF FACTS:**

66. On December 10, 2014,<sup>4</sup> the IEP team for the named student decided that the student would be provided with one (1) hour of speech/language services per week to improve his communication skills (Docs. o, h, v, and w).
67. On August 10, 2015, an IEP team meeting was held for the named student and the team decided that the student missed eighteen (18) sessions of speech services, which would be provided to him in his next school placement (Doc. w).
68. There is documentation that, since August 2015, speech/language services are being provided to students at the XXXX who require those services and that additional sessions are being held to make up for missed services for other students placed at the XXXX who were not provided with the amount of speech/language services required (Review of educational records and service logs).

**DISCUSSION/CONCLUSIONS:**

As stated above, each public agency must ensure that students are provided with the special education and related services in the educational placement required by the IEP (34 CFR §§300.101 and .323 and COMAR 13A.05.11.06).

In this case, the complainant alleges that, due to lack of availability of appropriate resources, students at the XXXX have not been provided with the amount of speech/language services required by the IEP (Doc. x).

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<sup>4</sup> There is documentation that, on November 14, 2014, the named student's mother requested an IEP team meeting to address her concerns that the student was not being provided with special education instruction as required by the IEP. The communication log maintained in the student's educational record reflects that, on December 10, 2014, an IEP team meeting was held. However, there is no documentation that the named student's mother was provided with an opportunity to participate in the meeting or with written notice of the decisions made by the team at the meeting (Docs. o and h).

Based on the Findings of Facts #66 - #68, the MSDE finds that a violation occurred with respect to this allegation.

**ADDITIONAL VIOLATIONS IDENTIFIED DURING THE COURSE OF THE INVESTIGATION:**

**Parent Participation in the December 10, 2014 IEP Team Meeting**

The public agency is required to take steps to ensure that the student's parents are afforded the opportunity to participate in each IEP team meeting. This includes notifying parents of the meeting early enough to ensure that they will have an opportunity to attend, and scheduling the meeting at a mutually agreed on time and place (34 CFR §300.322).

It also includes providing written notice of the date, time, and location of the meeting, as well as the purpose of the meeting and who will participate in the meeting. This written notice must be provided to the parent at least ten (10) days prior to the meeting unless an expedited meeting is being conducted to address disciplinary issues, determine the placement of a student who is not receiving services, or to meet other urgent needs of the student (and COMAR 13A.05.01.07).

Based on the Finding of Fact #66, the MSDE finds that the named student's parent was not provided with the opportunity to participate in a December 10, 2014 IEP team meeting, and that a violation occurred.

**Prior Written Notice of the Decisions Made at the December 10, 2014 IEP Team Meeting**

Written notice must be provided to parents within a reasonable time before the public agency proposes or refuses to initiate or change the identification, evaluation, or educational placement of students or the provision of a FAPE to students. This notice must include information about the decisions made, the basis for the decisions, the data used when making the decisions, and the options considered by the team (34 CFR §300.503). The purpose of providing prior written notice is to ensure that parents have sufficient information in order to determine whether they wish to exercise their right to access the dispute resolution procedures if they disagree with the IEP team's decisions.

Based on the Finding of Fact #66, the MSDE finds that the JSE did not ensure that prior written notice of the decisions made by the IEP team on December 10, 2014 was provided to the named student's parent and that a violation occurred.

**ALLEGATION #11**                      **IEP TEAM'S APRIL 29, 2015 DECISION REGARDING  
COMPENSATORY SERVICES**

**FINDINGS OF FACTS:**

69. A purpose of the April 29, 2015 IEP team for the named student was to determine whether he requires compensatory education as a result of the lack of the provision of related speech/language services from December 18, 2014 to April 7, 2015 (Doc. v).
70. The written summary of the April 29, 2015 IEP team meeting states that the team decided that compensatory services were not required. The team documented that the basis for the decision included that the student had made progress on the annual IEP goals and in the general curriculum, and that he "was receiving one hour a week of speech and language services." However, there is no documentation that the student was receiving these services. In addition, the IEP team documented at an April 3, 2015 IEP team meeting that the student needs to take and pass three HSA courses in order to meet the high school graduation requirements, and that, because he took the GED test and did not pass, he may need to enroll in a GED preparation class in the community. The team documented that information from a classroom-based assessment demonstrated that the student continued to perform "well below average," that the student needs to "put in more effort in getting his work done and ask for help when necessary," and that he "is capable of making much greater progress" (Docs. v and s).
71. On August 10, 2015, an IEP team meeting was held for the named student and the team decided that the student missed eighteen (18) sessions of speech/language services, which would be provided to him in his next school placement (Doc. w).

**DISCUSSION/CONCLUSIONS:**

The public agency must offer each student with a disability a FAPE through an IEP that includes special education and related services that address the student's identified needs. The special education services that are provided are to be based on the data about the student's individual needs (34 CFR §§300.101, .103, .320, .323, and .324).

Based on the Findings of Facts #69 and #70, the MSDE finds that the April 29, 2015 decision regarding the impact of the loss of speech/language services was not consistent with the data. Therefore, this office finds that a violation occurred.

Notwithstanding the violation, based on the Finding of Fact #71, the MSDE finds that the IEP team has subsequently met and determined the compensatory services to be provided for the loss of speech/language services. Therefore, no student-specific corrective action is required.

**CORRECTIVE ACTIONS/TIMELINES:**

**Student-Specific**

The MSDE requires the JSE to provide documentation by December 1, 2015 that it has taken the steps necessary to ensure that the named student's educational record accurately reflects the credits he has earned.

The MSDE requires the JSE to provide documentation by January 1, 2016 that it has taken the steps necessary to ensure that services are offered to the student to remediate the violations related to the ability to continue to take required core courses, the opportunity to earn service learning hours, the provision of special education instruction in the placement required by the IEP, and the provision of speech/language services. If the student is currently enrolled in a school system, the JSE must collaborate with that school system to have an IEP team held to determine the services to be provided.

**Similarly-Situated Students - XXXXXXXXX**

The MSDE requires the JSE to provide documentation by February 1, 2016 of the identification of students placed at XXXXXXXX during periods of time between August 8, 2014 and August 19, 2014 when there was no opportunity to earn service learning hours.

The MSDE also requires the JSE to provide documentation by February 1, 2016 of the identification of all students placed at XXXXXXXXX between August 8, 2014 and August 19, 2014 who were not provided with the special education instruction from a special education teacher in the separate special education classroom as required by their IEP.

For each student identified, the JSE must provide documentation that services were offered to compensate the student for the violations identified.

If a student is enrolled in a school system, the JSE must provide documentation that an IEP team meeting was held, in collaboration with the other school system, to determine the services to be provided.

If an identified student cannot be located, the JSE must provide documentation that appropriate efforts were made to locate the student.

**Similarly-Situated Students – the XXXXX**

The MSDE requires the JSE to provide documentation by February 1, 2016 of the identification of students placed at the XXXX during periods of time between September 4, 2014 and April 7, 2015 when there was no opportunity to earn service learning hours.

The MSDE requires the JSE to provide documentation by February 1, 2016 of the identification of all students placed at the XXXX between September 4, 2014 and April 7, 2015:

- a. who were not enrolled in a core course that they required and were taking prior to placement at the XXXX;
- b. who were not provided with the special education instruction from a special education teacher in the separate special education classroom as required by their IEP;
- c. who were not provided with the amount of speech/language services required by the IEP;
- d. whose educational record did not accurately reflect the courses completed; or
- e. whose educational record was not transferred to another school in a timely manner.

For each student identified, the JSE must provide documentation that services were offered to compensate the student for the violations identified.

If a student is enrolled in a school system, the JSE must provide documentation that an IEP team meeting was held, in collaboration with the other school system, to determine the services to be provided.

If an identified student cannot be located, the JSE must provide documentation that appropriate efforts were made to locate the student.

**School-Based – XXXXXXXX**

The MSDE requires the JSE to provide documentation by February 1, 2016 that students placed at XXXXXXXXXX are provided with the opportunity to earn service learning hours.

The MSDE also requires the JSE to provide documentation by February 1, 2016 of the steps taken to ensure that sufficient staff will be assigned to XXXXX if a student is placed at the facility requiring special education instruction in a separate special education classroom.



**School-Based – the XXXX**

The MSDE requires the JSE to provide documentation by January 1, 2016 that the special education teacher at the XXXX is supervised by certified teachers in areas in which she does not hold certification but provides instruction.

The MSDE also requires the JSE to provide documentation by February 1, 2016 of the steps taken to ensure that parents are provided with the opportunity to participate in IEP team meetings, that parents are provided with prior written notice of IEP team meetings, and that the decisions made by the IEP teams are consistent with the data.

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

**TECHNICAL ASSISTANCE:**

Technical assistance is available to the parties through Dr. Nancy Birenbaum, MSDE. Dr. Birenbaum may be contacted at (410) 767-0255.

Please be advised that the complainant and the JSE 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 students' parents and the JSE 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 students, including issues

Grace Reusing, Esq.  
Ms. S. Beth Hart  
November 3, 2015  
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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

c:     XXXXXXXXX  
       Jack R. Smith  
       Henry Johnson  
       Karen Salmon  
       Crystal Fleming-Brice  
       Anna Lisa Nelson  
       XXXXXXXXX  
       XXXXXXXXXXXX  
       Dori Wilson  
       Anita Mandis  
       Nancy Birenbaum  
       Elizabeth Kameen  
       Elliott L. Schoen  
       Alan Dunklow