



Jack R. Smith, Ph.D.
Interim State Superintendent of Schools

200 West Baltimore Street • Baltimore, MD 21201 • 410-767-0100 • 410-333-6442 TTY/TDD • msde.maryland.gov

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Grace Reusing, Esq.
Assistant Public Defender
Office of the Public Defender
District 01 – Baltimore City
Juvenile Protection Division
201 East Baltimore Street, 8th Floor
Baltimore, Maryland 21202

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

RE: XXXXX
Reference: #15-076

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 May 21, 2015, the MSDE received a complaint from Grace Reusing, Esq., Office of the Public Defender, hereafter “the complainant,” on behalf of the above-referenced student. In that correspondence, the complainant alleged that the Maryland State Department of Education Juvenile Services Education (JSE)¹ violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to the above-referenced student.

There is a sixty (60) day timeline for completion of the complaint investigation process. Due to the large number of allegations and schools covered by this complaint, it was necessary to extend the timeline for completion of this Letter of Findings, pursuant to (34 CFR §300.152).

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

The MSDE investigated the following allegations:

1. The JSE did not ensure that an IDEA evaluation was conducted and that the student was identified as a student with a disability while he was placed by the Maryland Department of Juvenile Services (DJS) at the XXXXXXXXXXXXXXXXXXXXXXXXXX (XXXX), the XXXXXXXXXXXXXXXXXXXXXXXXXX (XXXXXX), and the XXXXXXXXXXXXXXXXXXXXXXXXXX (XXXXXX) from June 7, 2014 to April 23, 2015, in accordance with 34 CFR §300.111.

The facts asserted to support this allegation include:

- a. The student's educational record has included assessment data that contain recommendations for an IDEA evaluation; and
 - b. The student's classwork demonstrates that he was not able to progress through the general curriculum without support.
2. The JSE did not ensure that the IDEA evaluation that was conducted as a result of the referral made on November 19, 2014 was completed within the required timelines while the student was placed by the DJS at XXXXXXXXX and at the XXXXXXXXXXXXXXXXXX (XXXX), in accordance with 34 CFR §300.301 and COMAR 13A.05.01.06.
3. The JSE has not ensured that the student has been provided with an Individualized Education Program (IEP) that addresses his social, emotional, and behavioral needs at the XXXX, in accordance with 34 CFR §300.324.
4. The JSE has not ensured that the student has been provided with an educational placement at the XXX that is based upon his needs and is consistent with the data, in accordance with 34 CFR §§300.114 - .116 and .324.
5. The JSE has not ensured that educational instruction has been provided to the student that meets the MSDE's educational standards since being identified as a student with a disability under the IDEA at the XXXXXXX² on April 23, 2015, 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.

² While the complainant asserted that the student was not provided with educational instruction that meets the State's standards at any of the DJS facilities in which he has been placed, she was informed, in writing, that this office may only address those allegations that occurred while he has been identified as a student with a disability under the IDEA through the State complaint procedure (34 CFR §§300.2 and .151 - .153).

The facts asserted to support this allegation include:

- a. That student has not been provided with access to instruction in core courses that would allow him to achieve credit requirements necessary to progress towards the standards for graduation; specifically:
 - i. The student was not provided with the opportunity to complete courses that he had been taking at other Maryland Department of Juvenile Services (DJS) facilities because of the unavailability of courses at the XXXX;
 - ii. The student was not provided with access to core courses such as physical education, health, fine arts, and world languages or American Sign Language; and
 - iii. The student has not been provided with instruction in the curriculum for the courses in which he is enrolled due to lack of adequate staffing to cover all of the courses offered and the lack of availability of texts and other resources.
- b. That the student has not been provided with the opportunity to work towards obtaining student service requirements necessary for graduation;
- c. That the student has not provided with the opportunity to participate in a program that prepares him to successfully obtain a Maryland High School Diploma by examination through the General Educational Development (GED) Testing Program; and
- d. That the student has not been provided with special education instruction from teachers who hold a valid Maryland certification in the areas of instruction provided.

INVESTIGATIVE PROCEDURES:

- 1. On May 26, 2015, the MSDE sent correspondence to the complainant that acknowledged receipt of the correspondence 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 JSE review the alleged violations.
- 2. On June 8 and 25, 2015, July 22, 2015, September 8, 2015, and October 19, 2015, the MSDE requested documents from the JSE.

3. On June 11, 2015, Ms. Anita Mandis, Section Chief, Complaint Investigation Section, MSDE, 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, MSDE consultant, to discuss the allegations. On that date, the MSDE requested that the JSE provide documents for review in order to conduct the investigation.
4. On June 24, 2015 and September 29, 2015, Ms. Mandis met with Ms. Fleming-Brice to discuss the allegations being investigated.
5. On June 25, 2015, Ms. Mandis conducted a telephone interview with the complainant about the allegations being investigated. On the same date, the complainant provided the MSDE with documentation to consider.
6. On July 9, 2015, Ms. Mandis and Ms. Vicky Ciulla, Monitoring and Accountability Specialist, MSDE, conducted a site visit at the XXXXXXXX (XXXX), and conducted interviews with the following school staff:
 - a. Ms. XXXXXXXX, Principal;
 - b. Mr. XXXXXXXX, Assistant Superintendent;
 - c. Ms. XXXXXXXX, Special Education Teacher;
 - d. Mr. XXXXXXXX, Career Research and Development Teacher;
 - e. Mr. XXXXXXXX, Science Teacher; and
 - f. Mr. XXXXXXXX, 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.

7. On July 10, 2015, Ms. Mandis and Ms. Janet Jacobs, Monitoring and Accountability Specialist, MSDE, conducted a site visit at the XXXXXXXXXXXXXXXXXXXXXXXXXX (XXXX), and conducted an interview with Ms. XXXXXXXX, 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.
8. On July 14, 2015, Ms. Mandis, Ms. Ciulla, and Dr. Nancy Birenbaum, Family Support Services Specialist, MSDE, conducted a site visit at the XXXXXXXXXXXXXXXXXXXXXXXXXX (XXXX), and conducted interviews with Mr. XXXXXXXX, Special Education Teacher, and Mr. XXXXXXXX, 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.

9. On July 15, 2015, Ms. Mandis and Ms. Memuna Bangura, Monitoring and Accountability Specialist, MSDE, conducted a site visit at the XXXXXXXXXXXX XXXXXXXXXXXX (XXXXXX), and conducted interviews with Ms. XXXXXXXXXXXX, Records Staff and Ms. XXXXXXXXXXXX, 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.
10. On July 20, 2015 and October 19 and 21, 2015, the JSE provided the MSDE with documents.
11. On July 24, 2015, Ms. Mandis conducted a telephone interview with Ms. Deborah St. Jean, Director, Office of the Public Defender, Juvenile Protection Division, regarding the allegations.
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. On the same date, the complainant provided additional information and documentation to be considered.
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 XXXXX since March 13, 2015. Ms. Fleming-Brice participated in the site visit as a representative of the JSE and to provide information the JSE's policies and procedures, as needed.
14. On September 14, 2015, Ms. Mandis met again with Ms. Nelson at the MSDE to review documents.
15. On October 16, 2015, the complainant provided the MSDE with additional information.
16. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
 - a. The XXXXX school schedule in effect since April 1, 2014;
 - b. The student record cards (SR 7), dated June 7, 2014 to August 20, 2014, September 16 to 24, 2014, September 29, 2014 to October 17, 2014, and October 17, 2014 to February 14, 2015;
 - c. Documentation of requests made for the student's educational record from June 9, 2014 to March 16, 2015;
 - d. Documentation of the receipt of records from June 10, 2014 to March 20, 2015;
 - e. Conduct history report from the Wicomico County Public Schools (WCPS), dated June 10, 2014;
 - f. Attendance history from the WCPS, dated June 10, 2014;
 - g. Transcript from the WCPS, dated June 10, 2014;

- h. Report of a psychological evaluation, dated July 17, 2014;
- i. Sample of a student certification of completion of a career technology education course, dated July 24, 2014;
- j. Report of the Spring Grove Hospital, dated September 23, 2014;
- k. Electronic mail (email) message from the complainant to the school staff, dated November 19, 2014;
- l. Excerpts from the communication log, dated October 22, 2014 to March 10, 2015 and May 14, 2015 to June 24, 2015;
- m. Letter from the school staff to the student's parent, dated January 14, 2015;
- n. Notice and Consent for Assessment, dated January 14, 2015;
- o. Report of an educational assessment conducted on January 30, 2015, February 2, 2015, and April 2, 2015;
- p. Electronic mail (email) correspondence between the JSE staff, dated March 11, 2015;
- q. Report of a neuropsychological evaluation, dated March 28, 2015;
- r. Report of a speech/language assessment, dated March 30, 2015;
- s. Correspondence between the XXXX principal and the school staff, dated April 13, 2015;
- t. Progress reports from April 9, 2015 to May 29, 2015;
- u. Reports of classroom observations conducted on April 13 and 14, 2014;
- v. Written summary of the April 22, 2015 IEP team meeting;
- w. IEP, dated May 6, 2015 and amended on July 8, 2015;
- x. Correspondence from the complainant containing allegations of violations of the IDEA, received by the MSDE on May 21, 2015;
- y. Local School System Annual Service-Learning Experience Tally, dated June 16, 2015 and descriptions of student service learning projects;
- z. Written summary of the July 9, 2015 IEP team meeting;
- aa. Samples of the student's class work;
- bb. Maryland Department of Juvenile Services *Data Resource Guide FY 2014*;
- cc. *The JSE General Educational Development (GED) Checklists for Skills and Content in Reading/Language Arts, Writing, Mathematics, Social Studies, Science, and Technology*;
- dd. *The JSE Program of Studies – Course Offerings and Descriptions*;
- ee. *The JSE Special Education Policy and Procedures* in effect since August 10, 2014;
- ff. Electronic mail correspondence from the complainant to the MSDE, received on October 16, 2015;
- gg. Records of textbook purchases;
- hh. The JSE Staff Day Agenda, dated October 14, 2015;
- ii. Sample of a physical education course that was provided to a student; and
- jj. Sample of a health course that was provided to a student.

BACKGROUND:

The student is seventeen (17) years old and is identified as a student with an Other Health Impairment under the IDEA related to Attention Deficit Hyperactivity Disorder (ADHD), and has an IEP that requires the provision of special education and related services.

During the time period covered by this investigation, the student was placed by the Maryland Department of Juvenile Services (DJS) at several DJS facilities, including the XXXXXX, XXXXX, XXXXXXXX, and the XXXX. The complainant reports that the student was returned to the community and is currently attending XXXXXXXXXXXXXXXXXXXXXXXX in Wicomico County (Docs. b, w, and x, and ff).

ALLEGATIONS #1 - #4: CHILD FIND, EVALUATION TIMELINES, DEVELOPMENT OF THE IEP, AND EDUCATIONAL PLACEMENT DECISION

FINDINGS OF FACTS:

1. On June 7, 2014, the DJS placed the student at the XXXXXX (Doc. b).
2. On June 9, 2014, the student was enrolled in school at the XXXXXX. On the same date, the school staff at the XXXXXX requested the student's educational records from the school staff at Wicomico County Public Schools (WCPS), the local school system in which the student previously received educational services (Doc. c).
3. On June 10, 2014, the school staff at the WCPS provided documents to the school staff at the XXXXXX. These documents included the student's attendance record, which reflects that the student had a great deal of absences, mostly for medical reasons. The documents also included the student's conduct history, which reflects that, during the 2013-2014 school year, disciplinary action had been taken as a result of the student being late for class, refusing to work, being disruptive in class, and refusing to follow staff direction (Docs. d - g).
4. On July 17, 2014, a report was developed after a psychological evaluation was conducted at the XXXXXX as a result of a recommendation made at a Multidisciplinary Assessment Staffing Team (MAST)³ in order to determine the student's psychological functioning and treatment needs. The report states that the student was informed that the results of

³ This is a meeting of a specialized diagnostic team convened by the DJS for the purpose of assessing youth who are detained and at risk of placement in a DJS facility at the disposition phase of the Juvenile Court procedure. The diagnostic team includes a psychologist, social worker, community case manager, detention facility case manager supervisor, resource specialist, school (JSE) staff, and other disciplines needed (Doc. bb).

the testing would not be confidential and would be shared with the Court, the DJS, and those involved with his treatment (Doc. h).

5. The July 17, 2014 report states that the student's full scale intelligence quotient (FSIQ) was in the "lower extreme range," but that "clinically significant differences exist between [the student's] index scores," and therefore, the FSIQ "is a less-accurate estimate of [the student's] overall cognitive functioning." The report further states that the student's facility with language and verbal problem-solving skills and nonverbal concept formation skills were both "significantly underdeveloped," and that his working memory and processing speed skills were "just a bit stronger." As a result, the evaluator stated:

Academics have likely been very frustrating for [the student] given his limited ability and comorbid [Attention Deficit Hyperactivity Disorder]. An evaluation for eligibility for specialized instruction under IDEA is long overdue for this young man (Doc. h).

6. The July 17, 2014 report contains diagnoses of Unspecified Bipolar and Related Disorder, Oppositional Defiant Disorder, Attention Deficit Hyperactivity Disorder, Neurodevelopmental Disorder (secondary to lead poisoning), and Rule Out Intellectual Disability. It also contains recommendations that include evaluation of the student's academic needs and academic programming to his skill level in order to increase his skills while keeping him engaged in learning (Doc. h).
7. The school staff at the XXXXXX report that they participate in the MAST meetings and follow up on educational recommendations made. For example, there is documentation that steps were taken to refer a student for an IDEA evaluation following a MAST meeting in which concerns were raised about the student's possible need for special education services. However, there is no documentation that school staff reviewed the July 27, 2014 report that was issued as a result of recommendations made at the MAST meeting held for the student who is the subject of this investigation (Review of student educational records and interview with the school staff).
8. On August 20, 2014, the student was admitted to the XXXXXXXXXXXXXXXXXXXX pursuant to an August 19, 2014 order of the Juvenile Court (Doc. j).
9. On September 16, 2014, the DJS again placed the student at the XXXXXX and he was enrolled in the educational program on September 17, 2014 (Doc. b).
10. On September 17, 2014, the school staff from the XXXXXX requested the student's educational records from the WCPS and was informed that the student had not returned to the school system and that there were no records to provide in addition to those previously provided on June 10, 2014 (Doc. c).

11. On September 23, 2014, the Spring Grove Hospital developed an evaluation report, indicating that, based on an August 22, 2014 neurological evaluation, the student was not demonstrating any acute neurological symptoms. The report states that a “mild cognitive impairment” was noted that was believed to be related to childhood lead poisoning “versus post concussive syndrome” as a result of a February 2014 incident in which he was hit by a motor vehicle. Diagnoses were made of Conduct Disorder, Oppositional Defiance Disorder, and Attention Deficit Hyperactivity Disorder. The report contains treatment recommendations and states the following:

It is frustrating to see that [the student] was never evaluated for special education given that he has been dealing with behavioral issues and school failure since a young age (Doc. j).

12. On September 24, 2014, the DJS placed the student at XXXXX (Doc. b).
13. On September 29, 2014, the student entered the JSE school at XXXXXXXX. On the same date, the school staff at XXXXXXXX requested the student’s educational records from both the school staff at the XXXXXXXX and the WCPS (Doc. c).
14. On September 29, 2014, the school staff at the WCPS provided the school staff at XXXXXXXX with the student’s educational records (Doc. d).
15. On September 30, 2014, the school staff at the XXXXXXXX provided the student’s educational records to the school staff at XXXXXXXX (Doc. d).
16. On Friday, October 17, 2014, the DJS placed the student at XXXXXXXXXXXX and he was enrolled in the school (Doc. b).
17. On Wednesday, October 22, 2014, the school staff at XXXXXXXXXXXX requested the educational records from both the school staff at XXXXXXXX and the school staff at the XXXXXXXX (Doc. c).
18. On Monday, October 27, 2014, the school staff at XXXXXXXXXXXXX made a second request for the student’s educational records (Doc. c).
19. On Tuesday, October 28, 2014, the student’s educational records were provided to the school staff at XXXXXXXX by the school staff at XXXX and the XXXXXX (Doc. d).
20. On November 19, 2014, the complainant made a referral for an IDEA evaluation while the student was placed at XXXXXXXXX, and the following steps were taken:

- a. On December 9, 2014, the school staff made three (3) attempts to contact the student's parent by telephone to obtain her consent to conduct an evaluation, and received a voice mail recording that she was not accepting calls.
- b. On December 10, 2014, the school staff contacted the student's DJS case manager from XXXXXXXXXX and obtained additional telephone numbers to attempt to contact the student's parent. On the same date, the school staff unsuccessfully attempted to contact the student's parent using the additional telephone numbers.
- c. On December 10, 2014, the school staff sent an invitation to the student's parent to an IEP team meeting for December 22, 2014.
- d. On December 22, 2014, the school staff unsuccessfully attempted to contact the student's parent by telephone. On the same date, the school staff contacted the complainant and requested assistance with contacting the student's parent. The school staff also sent written consent to conduct the evaluation to the complainant in the event that the complainant was able to locate the parent.
- e. On January 5, 2015, the United States Postal Service returned as undeliverable to the school staff certified mail, which had been addressed to the student's parent. On the same date, the complainant informed the school staff that she was informed by the student's DJS community case worker that he was unsuccessful in his attempts to locate the student's parent. The school staff informed the complainant that a parent surrogate would need to be appointed to provide written consent for evaluation if the parent could not be located.
- f. On January 7, 2015, the school staff contacted the student's DJS case manager from XXXXXX, who indicated that he was unable to locate the student's parent.
- g. On January 12, 2015, the DJS staff provided the school staff with an additional telephone number at which to attempt to reach the student's parent. On the same date, the school staff reached the student's parent by telephone and she provided a new address.
- h. On January 14, 2015, the school staff sent the student's parent written consent to conduct the evaluation to the parent's new address.
- i. On January 16, 21, 22, and 23, 2015, the school staff left telephone messages for the student's parent to contact the school about returning the written consent for the evaluation.
- j. On January 28, 2015, the school staff contacted the complainant and requested assistance in obtaining the written consent for the evaluation from the student's

parent. On the same date, the JSE staff reported to the school staff that they would attempt to obtain the parent's consent as well.

- k. On January 29, 2015, the JSE informed the school staff that consent for the evaluation was obtained (Docs. k - n).
- 21. On February 14, 2015, the DJS removed the student from XXXXXX and placed him at the XXXXXXXXXXXXXXXXXXXX. At that time, the educational and psychological testing to be used for the IDEA evaluation had been completed at XXXXXXXX (Doc. b).
- 22. On February 20, 2015, the DJS placed the student at the XXXXXXXX (Docs. b, c, and d).
- 23. On February 23, 2015, the school staff at the XXXXXXXX requested the student's educational records from the school staff at XXXXXXXX (Doc. c).
- 24. On February 24, 2015, the school staff from XXXXXXXXXXXX sent the student's educational records to the school staff at the XXXXXXXX (Doc. d).
- 25. On March 13, 2015, the DJS placed the student at the XXXX and he was enrolled in the education program (Doc. p).
- 26. On March 13 and 16, 2015, the school staff at the XXXXXXXX requested the student's educational records from the XXXXXXXX (Doc. c).
- 27. On March 20, 2015, the school staff at the XXXXXXXX was provided with the student's educational records (Doc. d).
- 28. On April 22, 2015, the IEP team at the XXXXXXXX determined that the student meets the criteria for identification as a student with a disability under the IDEA. The written summary of the meeting reflects that the IEP team determined that the student's behavioral problems are most likely due to environmental factors and learned behaviors (social maladjustment) and not an Emotional Disability. The summary also reflects that the team considered that the student could meet the criteria for identification with an Intellectual Disability, but that it decided that the primary disability is an Other Health Impairment related to the Attention Deficit Hyperactivity Disorder (Doc. v).
- 29. On May 6, 2015, an IEP was developed (Doc. w).
- 30. When conducting the IDEA evaluation and developing the IEP, the IEP team considered the following data:
 - a. The report of the July 17, 2014 psychological evaluation (see the Findings of Facts #4 - #6 above). The report states that there were "no clinically significant

symptoms of low mood/depression and/or anxiety in any area assessed.” However, the report states that the student has a “significant history of noncompliance, disruption and disrespectful behavior at school, poor attendance, and anger and aggression,” and contains a recommendation for therapy to “learn effective means of coping, manage defiant tendencies, accept social responsibility and improve self-esteem” (Doc. h).

- b. The report of the August 22, 2014 neurological evaluation (see the Finding of Fact #11 above).
- c. The September 23, 2014 Spring Grove Hospital report (see the Finding of Fact #11 above). The report states that “antisocial traits and premeditated negative behavior” were observed in the student. The report further notes that “no evidence of bipolar disorder was observed throughout [the student’s] hospitalization,” but that his parent reported that he had been diagnosed with the disorder (Doc. j).
- d. The report of an educational assessment conducted on January 30, 2015, February 2, 2015, and April 2, 2015, stating that the student is performing at the third (3rd) grade level in reading comprehension, the fifth (5th) grade level in math calculation and problem solving, the fourth (4th) grade level in written language mechanics, the third (3rd) grade level in written language expression (Doc. o).
- e. The report of a March 28, 2015 neuropsychological evaluation, finding that the student’s intellectual functioning is “severely impaired” and that his adaptive behavior is between “borderline impaired” and “severely impaired.” The report states that the pattern of scores “appear to be most consistent with a diagnosis of Intellectual Disability, Mild and associated learning difficulties, which are exacerbated by [the student’s] unmanaged symptoms of [Attention Deficit Hyperactivity Disorder] and underlying Oppositional Defiant Disorder.” The report states that “the current assessment results appear to be a fair estimate of [the student’s] baseline level of cognitive functioning when his [Attention Deficit Hyperactivity Disorder] symptoms are not well-managed, but may underestimate his optimal level of cognitive functioning.” The report states that “significant variability in performance may be attributable to the aforementioned variables of inattention and low frustration tolerance, which may fluctuate depending on [the student’s] degree of compliance with his [Attention Deficit Hyperactivity Disorder] medications and situational variables” (Doc. q).
- f. The March 28, 2015 report of the neuropsychological evaluation contains recommendations for small group instruction and testing, provision of clear and concise instructions, reduced amount of information to be remembered, checks for adequate attention and understanding, assistance linking new information to

existing information so associations can be made, assistance with organization of information, pre-teaching of all components of skills, provision of immediate practice with difficult tasks and to ensure mastery at each step in the learning process, and the provision of extra time to complete in-class examinations (Doc. q).

- g. The report of a March 30, 2015 speech/language assessment, stating that while the student's articulation, voice, and fluency skills appear to be "within normal limits," his receptive and expressive language skills are "significantly impaired." Recommendations were made for repetition and redirection to encourage attention to task, having the student repeat directions, chunking of materials and assignments into smaller units, additional time to complete class work, as well as the provision of visual, verbal, and phonemic prompts to encourage the student to increase the accuracy of grammar and length and complexity of sentences. A recommendation was also made for direct instruction from a speech language pathologist in a separate special education classroom to teach the student strategies to enhance his strengths and support his weaknesses (Doc. r).
 - h. Reports of classroom observations conducted on April 13 and 14, 2015, stating that the student displayed inattention and off-task behavior "due to frustration or fatigue." Recommendations were made to keep instructional sessions short and not too late in the afternoon, provide incentives or rewards to motivate the student to work, provide the opportunity to take short breaks, and the use of graphic organizers, outlines, and study guides (Doc. u).
 - i. Teacher reports and the student's report card, reflecting concerns with excessive talking, off task and disruptive behavior, the need to improve work habits, and inconsistent effort (Docs. o and t).
 - j. Concerns of the student and his parent that the student be provided with sufficient academic supports to be successful in the general education classroom (Doc. v).⁴
31. The IEP developed on May 6, 2015, includes annual goals for the student to do the following:
- a. Demonstrate understanding of story structure on curriculum-based assignments using fourth (4th) grade reading level text.
 - b. Add, subtract, multiply, and divide using appropriate computational strategies.

⁴ Prior to being identified as a student with a disability, interventions in the general education program were provided to the student in the separate special education classroom. However, those interventions were not sufficient to assist the student in accessing the general curriculum (Review of the student's educational record).

- b. Model and interpret “real-world” situations using the language of mathematics and appropriate technology when given fifth (5th) grade level word problems.
 - c. Compose fourth (4th) grade level texts using prewriting, drafting, and editing strategies.
 - e. Increase the ability to use receptive speech by building vocabulary, identifying synonyms and antonyms, and correcting grammatical errors.
 - f. Increase the ability to use pragmatic speech and language skills by correctly interpreting and using figurative language, indirect request, and sarcasm.
 - g. Make positive self-statements and display positive self-talk in order to be engaged in learning.
 - h. Maintain attention to complete class assignments (Doc. w).
32. The IEP requires that the student be provided with special education instruction and related services of counseling and speech/language therapy to assist him in achieving the goals. It also requires the provision of verbal prompting for on-task behavior, visual cues, extra processing time, extended time to complete assignments, visual and graphic organizers, changes in seating to keep him focused, reduced distractions, modeling, breaks, and verbal and nonverbal cues. In addition, the IEP states that the school staff will have the student repeat and paraphrase information, check for the student’s understanding, and break down assignments into smaller units (Doc. w).
33. The IEP team documented the decision that the Least Restrictive Environment (LRE) in which the student could be provided with special education instruction was the general education classroom for ten (10) hours per week with the provision of supplementary aids and services and with the provision of special education instruction in a separate special education classroom for twelve and one-half (12.5) hours per week. The parties report that, when making the placement decision, the student expressed concern that he had not received sufficient support in the resource room (separate special education classroom) and needed more intensive help throughout the school day. The special education teacher reports that she explained that she was only able to provide him with general education interventions in the resource room previously because he had not been identified as a student with a disability (Doc. w and interviews with the complainant and the school staff).
34. On July 9, 2015, the IEP team reconvened and considered information about the student’s progress. The school staff reported that the student sometimes will not engage in work, particularly in the morning, and indicates that that he is very sleepy due to medication.

The team also considered that the student is receiving a failing grade in English due to his lack of completing writing assignments. Based on the data, the team revised the IEP to include goals for the student to increase his use of sentences to express ideas and increase his writing skills in the areas of paragraph writing organization and sentence fluency. The team also decided that the student will be provided with positive/concrete reinforcers and the use of a behavior chart to assist him with following directions. In order to assist the student with improving his written language skills, the team decided to increase the amount of special education instruction in the separate special education classroom to twelve (12) and one-half (.5) hours per week (Doc. z).

35. The documentation of the July 9, 2015 IEP team meeting reflects that the team considered the complainant's concern that the student was not identified with an Intellectual Disability or an Emotional Disability for purposes of qualifying for adult services when he exits school. The school-based members of the team explained that the student does not meet the criteria for identification as a student with an Emotional Disability, and that the purpose of determining a primary disability is solely to meet federal census reporting requirements and is not used to determine whether a student will qualify for adult services (Doc. z).
36. A review of student educational records reflects that the IEP for students who require special education instruction in a separate special education classroom receive varying amounts of instruction in that setting. One (1) 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:

Allegation #1: Child Find

The public agency must ensure that each student with a disability residing within its jurisdiction is identified and is offered a Free Appropriate Public Education (FAPE) through an Individualized Education Plan (IEP). This Child Find obligation is required even if the student has not failed or been retained in a course or grade, and is advancing from grade to grade (34 CFR §§300.101, .111, and .320).

The Child Find requirements of the IDEA impose an affirmative obligation on the school system to identify, locate, and evaluate all students residing within its jurisdiction who are suspected of having disabilities and who need special education instruction and related services (34 CFR § 300.111). It is the intent of State and federal law that interventions and strategies be implemented to meet the needs of students within the regular school program, as appropriate, before referring students for special education services.

To meet this expectation, school staff may review a student's academic and behavioral performance and determine teaching strategies, modifications to instruction, and behavior management techniques, which will appropriately assist the student. However, the public agency must ensure that implementation of intervention strategies do not delay or deny a student's access to special education services under the IDEA (34 CFR §300.111).

Based on the Findings of Facts #1 - #30, the MSDE finds that, while the JSE ensured that the student's educational record was obtained each time the DJS transferred the student to a different facility, it did not ensure that the data from the DJS, which was used as a basis for identifying the student with a disability and developing the IEP, was reviewed prior to the evaluation that was conducted at the request of the complainant. As a result, recommendations for conducting an IDEA evaluation were not considered, which resulted in a delay in conducting the evaluation until the complainant requested an evaluation on November 19, 2014. Therefore, this office finds that a violation occurred with respect to the allegation.

Allegation #2: Evaluation Timelines

Upon receipt of a referral for an evaluation, the public agency must review the existing data, including evaluations, information provided by the student's parents, classroom-based assessments, and observations conducted by teachers. On the basis of that review, the public agency must determine whether additional data is needed (34 CFR §§300.301 - .305 and COMAR 13A.05.01.04).

The public agency must obtain parental consent to conduct an evaluation and must ensure that the evaluation is completed within sixty (60) days of parental consent for assessments and within ninety (90) days of the receipt of the referral for evaluation. However, if the student is a ward of the State and is not residing with a parent, the public agency is not required to obtain informed consent from the parent for an initial evaluation if, despite reasonable efforts to do so, the public agency cannot discover the whereabouts of the parent (34 CFR §§300.300, .301, and COMAR 13A.05.01.06).

A student is a ward of the State when the student has been committed by a court of competent jurisdiction to the legal custody of the State or county agency with the express authorization that the State or county agency makes education decisions (Md. Educ. Code Ann. §8-412).

Based on the Findings of Facts #4, #8, and #16, the MSDE finds that the student was a ward of the State at the time that consent was sought from his parent to conduct the initial evaluation. Based on the Finding of Fact #20, the MSDE finds that the JSE ensured that reasonable efforts were made to locate the parent in order to obtain parental consent to conduct the evaluation.

However, based on the Findings of Facts #20 - #28, the MSDE finds that the DJS placed the student in three (3) different facilities between the date that the school staff were informed that

consent had been provided and the date that the evaluation was completed, and that the evaluation was not completed within sixty (60) days of notice of the parent's consent, as required.⁵ Therefore, this office finds that a violation occurred, which resulted in a delay in the completion of the evaluation from March 29, 2015 (60 days from the date of consent) until April 22, 2015.

Allegation #3 IEP that Addresses the Student's Identified Needs

While the IDEA does not require that a public agency determine a student's primary disability, it does require that a student be assessed in all areas related to the suspected disability. The IDEA also requires that the evaluation be sufficiently comprehensive to identify all of the special education and related service needs, whether or not commonly linked to the disability category in which the student has been classified (34 CFR §300.304).

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 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 (34 CFR §§300.101, .103, .320, .323, and .324).

In developing each student's IEP, the public agency must ensure that the IEP team considers the strengths of the student, the concerns of the parents for enhancing the education of the student, the results of the most recent evaluation, and the academic, developmental, and functional needs of the student. In the case of a child whose behavior impedes his or her learning or that of others, the IEP team must consider positive behavioral interventions and supports, and other strategies, to address that behavior (34 CFR §§300.320 and .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 Education 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 (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).

When it is determined that the public agency has not followed proper procedures, the SEA can require it 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. The SEA may not, however,

⁵ There are specific exceptions to the timelines that apply when a student is enrolled in different public agencies during the pendency of an evaluation (34 CFR §300.301). However, in this case, the juvenile services education programs, while located all over the State, are considered the same public agency. Therefore, the exception cannot be applied.

overturn an IEP team's decisions when proper procedures have been followed and there is data to support the team's decisions. The OSEP indicates that parents may challenge an IEP team's decisions by filing a due process complaint or requesting mediation to resolve the dispute (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).

A student with a disability means a student who has been evaluated as having one (1) of a list of impairments, including Other Health Impairment, Speech/Language Impairment, Emotional Disability, and Intellectual Disability, and who, by reason thereof, needs special education and related services (34 CFR §300.8).

An Other Health Impairment means having limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment. This may be due to chronic or acute health problems such as Attention Deficit Hyperactivity Disorder and lead poisoning (34 CFR §300.8).

A Speech/Language Impairment means a communication disorder, such as stuttering, impaired articulation, a language impairment, or a voice impairment, that adversely affects a student's educational performance (34 CFR §300.8).

An Emotional Disability means a condition exhibiting one (1) or more characteristics over a long period of time and to a marked degree that adversely affects a student's educational performance. These characteristics include:

- An inability to learn that cannot be explained by intellectual, sensory, or health factors.
- An inability to build or maintain satisfactory interpersonal relationships.
- Inappropriate types of behavior or feelings under normal circumstances.
- A general pervasive mood of unhappiness or depression.
- A tendency to develop physical symptoms or fears associated with personal or school problems.

The term Emotional Disability does not apply to students who suffer from social maladjustment (34 CFR §300.8).

An Intellectual Disability means significantly subaverage general intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period, that adversely affects educational performance (34 CFR §300.8).

Multiple disabilities means concomitant impairments (such as Intellectual Disability and Blindness or Intellectual Disability and Orthopedic Impairment), the combination of which causes such severe educational needs that they cannot be accommodated in special education programs solely for one of the impairments (34 CFR §300.8).

In this case, the complainant alleges that the IEP team's decision that the student's primary disability is an Other Health Impairment related to his Attention Deficit Hyperactivity Disorder is inconsistent with the data, and that the student meets the criteria for identification with Multiple Disabilities, including an Intellectual Disability, a Speech/Language Impairment, and an Emotional Disability (Doc. x).

Based on the Findings of Facts #6, #11, and #30, the MSDE finds that there is documentation to support the IEP team's decision that the student does not meet the criteria for identification as a student with an Emotional Disability. In addition, based on the Findings of Facts #5, #6, #11, and #30, the MSDE finds that there is documentation to support the IEP team's decision that the student meets the criteria for identification as a student with an Other Health Impairment under the IDEA.

Based on the Findings of Facts #5, #6, #11, and #30 - #35, the MSDE finds that there is also documentation that the IEP addresses the student's needs in all areas of identified need, whether or not commonly linked to an Other Health Impairment, including his needs related to his cognitive functioning and his speech/language needs. Therefore, this office does not find that a violation occurred with respect to the allegation.

Allegation #4 Educational Placement Decision

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).

In this case, the complainant alleges that the IEP team's decision that the IEP can be implemented in the general education classroom is inconsistent with the school staff's reports that the student demonstrates impulsive behaviors that interfere with his ability to remain focused and the student's report that he has difficulty understanding concepts presented, even in the resource room (separate special education classroom). The complainant further alleges that the IEP team's May 6, 2015 decision to provide two (2) hours per day of special education instruction in the separate special education classroom was based on the amount of time that the special education teacher has to spend in the special education classroom and not on the student's needs (Doc. x).

Based on the Findings of Facts #33 and #34, the MSDE finds that the IEP team considered information from the student, his parent, and the school staff, and the supplementary aids and services that can be provided when determining the LRE in which the IEP can be implemented. Based on the Finding of Fact #36, the MSDE further finds that there is no documentation to

support the allegation that the placement decision was based on the availability of services and not on the student's needs. Therefore, this office does not find that a violation occurred with respect to the allegation.

ALLEGATION #5: EDUCATION PROGRAM THAT MEETS STATE STANDARDS

FINDINGS OF FACTS:

Allegation #5a Access to Instruction in Core Courses

37. The Student Record Card 7 (SR 7) reflects that, prior to being placed at the XXXX on March 13, 2015, the student was taking, but had not completed, a career research and development course. The student was not continued in that course when placed at the XXXXX because the XXXX had a staff vacancy for the teaching position for that course. That position has now been filled and the student was subsequently enrolled in that course (Docs. b and z).
38. There is documentation that, while the student was enrolled in a United States history course when he was placed at the XXXXX, samples of classroom tests given to the student reflect that they are for a world history course (Doc. aa).
39. A review of course work completed by students placed at the XXXX reflects that they have been working on the skills described in the *JSE Course Offerings and Descriptions* for the courses in which they were enrolled, with the exception of two (2) cases. In those cases, the students' class work did not reflect that they were consistently working on the skills covered by their respective science classes. In one (1) of those cases, the teacher transferred the student to a different science course because he was struggling in the previous class, but did not inform the guidance counselor of the change in course (Doc. dd and review of student educational records at the XXXXX).
40. A review of internal correspondence between the XXX school staff and the JSE staff documents the progressive steps being taken since August 2014 to ensure that teachers provide instruction in the content required for the courses in which students are enrolled (Review of internal JSE correspondence and staffing records).
41. *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 if there are no other core courses that a student (Docs. dd, ii, jj, and review of student educational records).
42. Instruction is provided using a combination of text books 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 textbooks to be used uniformly in all DJS facilities (Docs. gg, hh, and review of textbooks and resource materials and the JSE curriculum maps for core subject areas).

43. The XXXX school schedule in effect during the period of time that the student has been placed at the XXXXXX reflects that the school day began at 8:00 a.m. and ended at 3:30 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 and one-half (1.5) hour period for lunch and teacher planning (Doc. a).
44. The school schedule currently in effect 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. a).
45. 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. i and dd).
46. A review of student educational records reflects that the XXXX school schedule enabled some students to be provided with only enough instruction in science and social studies to earn one-half (.5) of a credit for those courses during the school year. However, the records also reflect that students have received one-half (.5) of a credit in courses while attending 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 and interviews with the JSE staff).
47. 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 #5b Opportunity to Obtain Student Service Requirements

48. 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 the 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. y, tour of the Aquaponics Program, and interviews with the JSE and school staff staff).

Allegation #5c Opportunity to Prepare for General Educational Development (GED) Testing

49. 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. cc 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).
50. A review of the on-line GED Ready Test results reflects that the student took the math portion of the test only, the results of which indicate that he has many skills that need to be developed before he would be able to pass the test (Review of the on-line GED Ready Test results).

Allegation #5d Provision of Special Education Instruction from Teachers Holding Maryland Certification in the Areas of Instruction Provided

51. The IEP requires that the student be provided with special education instruction in general education and separate special education classrooms by a special education teacher, a general education teacher, or an instructional assistant (Doc. w).
52. From April 23, 2015 to August 1, 2015, the English and science teachers held conditional certification. These staff members obtained full certification on August 1, 2015. In addition, since the start of the time period covered by this investigation, there has been a social studies teacher who is certified in the area of instruction (Review of staffing documents).
53. Since the start of the time period covered by this investigation, there has not been a math teacher who is certified in that area of instruction. Since August 21, 2015, an instructional assistant has been providing instruction in math as a result of the math teaching leaving the XXXX (Review of staffing documents).
54. There is documentation that the XXXX principal has been conducting observations in the classrooms of those teachers who do not hold certifications in the areas in which they provide instruction. However, there is no evidence of supervision of non-certified teachers by certified teachers prior to February 26, 2015 (Doc. s and review of staffing documents).
55. 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).

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).

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:

Allegation #5a

Access to Instruction in Core Courses

The IDEA requires that a 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 must 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).

In this case, the complainant asserts 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 #41, the MSDE finds that while the JSE does not regularly provide instruction in these core courses, there is evidence that instruction has been provided in these areas when a student requires those courses. Therefore, this office does not find that a violation occurred with respect to this aspect of the allegation.

In addition, 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, which impedes the ability of students to make progress in the general curriculum. The complainant also alleges 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 because of the lack of textbooks in each areas of instruction and the fact that teachers are required to obtain their own instructional materials independently (Doc. x).

Based on the Finding of Fact #37, the MSDE finds that the JSE did not ensure that the student was able to continue to take a core course needed to progress through the general curriculum due to a staff shortage when he was placed by the DJS at the XXXX and that a violation occurred with respect to this aspect of the allegation.

However, based on the Finding of Fact #37, the MSDE finds that the JSE subsequently enrolled the student in the course he was unable to take upon placement at the XXX due to a staff shortage. Therefore, no student-based corrective action is required.

Based on the Finding of Fact #38, the MSDE finds that the JSE did not ensure that the student received instruction in the content of the courses in which he was enrolled, and that a violation occurred. Based on the Findings of Facts #39 and #40, the MSDE finds that, although the JSE is taking steps to ensure that students are provided with instruction in the courses in which they are enrolled, there is evidence that some students continue to not be provided with instruction in the content covered by the courses in which they are enrolled.

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 the student was not permitted to earn less than one-half (.5) a credit in courses (Doc. x). Based on the Findings of Facts #42 - #47, the MSDE finds that there is documentation that the student was 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) a credit for a course, this office does not find that a violation occurred with respect to this aspect of the allegation.

Allegation #5b

Opportunity to Obtain Student Service Requirements

To be awarded a Maryland High School Diploma, a student must also 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 XXXX 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).

Based on the Findings of Facts #48, the MSDE finds that there is evidence that the student has been able to participate in a project that allows him to earn service learning hours since being placed by the DJS at the XXX on March 13, 2015. Therefore, this office does not find that a violation has occurred with respect to this aspect of the allegation.

Allegation #5c

Opportunity to Prepare for 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).

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 #49 and #50, the MSDE finds that the documentation does not support the allegation. Therefore, this office does not find a violation with respect to this aspect of the allegation.

Allegation #5d Provision of Special Education Instruction from Teachers Holding Maryland Certification in the Areas of Instruction Provided

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).

A special education teacher must hold certification in special education and in each core course taught. However, a special education teacher is not required to demonstrate subject matter

competence in the core academic subjects if the teacher is: (1) providing consultation services to other teachers, such as adapting curricula, using behavioral supports and interventions, or selecting appropriate accommodations for students with study or organizational skills needs; or (2) reinforcing instruction that the student is receiving from a highly qualified teacher in the core academic subject (*Questions and Answers on Highly Qualified Teachers Serving Children with Disabilities*, United States Department of Education, Office of Special Education Programs, 107 LRP 11710, January 1, 2007).

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. ee).

In this case, the complainant acknowledges the challenges faced by the JSE in recruiting and maintaining certified staff, and asserts that 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. However, the complainant alleges that these procedures are not being implemented (Doc. x).

Based on the Findings of Facts #51 - #54, the MSDE finds that the general education teachers who do not hold certification have been supervised by certified teachers and that the principal has been conducting classroom observations, in accordance with the JSE procedures.

However, based on the Finding of Fact #55, 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 a violation with respect to the allegation.

Notwithstanding the violation, the teacher qualification requirements do not create a right of action on behalf of an individual student or class of students. Therefore, no student-specific corrective action is required.

CORRECTIVE ACTIONS/TIMELINES:

Student-Specific

The MSDE requires the JSE to provide documentation by January 1, 2016 that it has taken the steps necessary to ensure that services are provided to the student to remediate the violations related to the delay in identification as a student with a disability under the IDEA, and the provision of special education instruction in a core course in which the student was enrolled. The JSE must collaborate with the WCPS or any other school system in which the student is currently enrolled in order to have an IEP team held to determine the services to be provided.

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

The MSDE requires the JSE to provide documentation by February 1, 2016 of the steps taken to ensure that the school staff review the results of assessments conducted as a result of MAST meetings and follow education-related recommendations, as appropriate.

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 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 students, including issues subject to this State complaint investigation, consistent with the IDEA. The MSDE

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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: XXXXXXXXXX
 Jack R. Smith
 Henry Johnson
 Karen Salmon
 Crystal Fleming-Brice
 Anna Lisa Nelson
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 XXXXXXXXXX
 XXXXXXXXXX
 Dori Wilson
 Anita Mandis
 Nancy Birenbaum
 Memuna Bangura
 Janet Jacobs
 Vicky Ciulla
 Elizabeth Kameen
 Elliott L. Schoen
 Alan Dunklow