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November 3, 2015

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

RE: XXXXXXXX  
Reference: #16-001

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 July 1, 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, who was placed at the XXXXXXXXXXXXXXXX (XXX), 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 student. The MSDE investigated the following allegations:

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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).

1. The JSE has not ensured that educational instruction has been provided that meets the MSDE's educational standards since July 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. The complainant specifically alleged the following:
  - a. That the student was not provided with access to instruction in core courses that allowed him to achieve credit requirements necessary to progress towards the standards for graduation;
  - b. That the student was not provided with six (6) hours of educational instruction per day;
  - c. That the student was not provided with the opportunity to participate in a program to prepare him to successfully obtain a Maryland High School Diploma by examination through the General Educational Development (GED) Testing Program; and
  - d. That the student was not provided with special education instruction from teachers who hold a valid Maryland certification in the areas of instruction provided.
2. The student was not provided with special education instruction in math and English from both general and special education teachers in the general education classroom, as required by the Individualized Education Program (IEP), in accordance with 34 CFR §§300.2, .101, .103, and .323.
3. The student was not provided with special education instruction during periods of time when he was scheduled to receive special education, but was not permitted to leave the residence for safety and security reasons, in accordance with 34 CFR §§300.2, .101, .103, and .323.

#### **INVESTIGATIVE PROCEDURES:**

1. On July 2, 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 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.

3. On July 9, 2015, Ms. Mandis and Ms. Vicky Ciulla, Monitoring and Accountability Specialist, MSDE, conducted a site visit at the XXXXXXXXXXXX (XXX) and interviewed the following school staff:

- a. Ms. XXXXXXXXXXXX, Principal;
- b. Mr. XXXXXXXXXX, DJS Assistant Superintendent;
- c. Ms. XXXXXXXXXXXX Special Education Teacher;
- d. Mr. XXXXXXXXXX, Career Research and Development Teacher;
- e. Mr. XXXXXXXXXX, Science Teacher; and
- f. Mr. XXXXXXXXXX, 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.

4. On July 20 and 22, 2015, the JSE provided the MSDE with documents.
5. On July 22, 2015, September 8, 2015, and October 19, 2015, the MSDE requested additional documents from the JSE.
6. 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.
7. On August 25, 2015, Ms. Mandis, Ms. Ciulla, and Dr. Nancy Birenbaum, Family Support Services Specialist, MSDE, conducted a review of the educational records of students placed at the XXXXX since July 8, 2014.
8. On August 26, 2015, September 2, 2015, and October 21, 2015, the school staff from the XXXXX provided additional documents to the MSDE.
9. On September 14, 2015, Ms. Mandis met again with Ms. Nelson at the MSDE to review documents.
10. On September 28, 2015, Ms. Mandis met with Ms. Fleming-Brice and Dr. Kim Lewis, JSE consultant, to review documents.
11. On October 16, 2015, the complainant provided the MSDE with additional information.
12. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
  - a. Student record card 3 (SR 3) for the 2013-2014 and 2014-2015 school years;
  - b. IEP, dated March 14, 2014;

- c. Third quarter 2014 report to the Maryland Legislature from the Maryland Office of the Attorney General Juvenile Justice Monitoring Unit;
- d. The XXX school schedules in effect from April 1, 2014 to July 6, 2015;
- e. Requests made for the student's educational records upon his placement at the XXXXX on July 8, 2014 and progress reports provided by the Baltimore City Juvenile Justice Center;
- e. The *JSE Special Education Policy and Procedures* in effect since August 10, 2014;
- g. Student record card 7 (SR 7) for the period of July 8, 2014 to December 17, 2014;
- h. Progress reports from August 4, 2014 to November 11, 2014;
- i. The student's report cards, dated September 16, 2014 and November 26, 2014;
- j. Email message from the JSE to the DJS, dated October 17, 2014;
- k. Written summary of an October 23, 2014 IEP team meeting;
- l. Log of the student's placement at the XXXXX on July 8, 2014 and request and receipt of educational records;
- m. Educational record access log, dated between July 8, 2014 and November 14, 2014;
- n. Excerpts from the communication log, dated July 15, 2014 to October 28, 2014 and August 21, 2015;
- o. Correspondence from the complainant containing allegations of violations of the IDEA, received by the MSDE on July 1, 2015;
- p. The XXXXXX school schedule in effect since July 6, 2015;
- q. The *JSE General Educational Development (GED) Checklists for Skills and Content in Reading/Language Arts, Writing, Mathematics, Social Studies, Science, and Technology*;
- r. Description of co-teaching models;
- s. Description of the Intensive Service Unit (ISU); and
- t. The JSE Staff Day Agenda, dated October 14, 2015, and sample forms.

### **BACKGROUND:**

The student is (18) years old and is identified as a student with an Emotional Disability under the IDEA and is currently residing in XXXXX (Docs. a, b, g, h, i, and l - n).

From July 8, 2014 to December 17, 2014, the student was placed by the Maryland Department of Juvenile Services (DJS) at the XXXXXXXXXXXXXXXX (XXXXXX). At that time, the student had an IEP that required the provision of special education instruction and related services (Docs. a, b, g, h, i, and l - n).

**ALLEGATION #1:                    EDUCATION PROGRAM THAT MEETS  
STATE STANDARDS**

**FINDINGS OF FACTS:**

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

1.        Prior to being placed at the XXXXXX on July 8, 2014, the student was placed at the XXXXX  
XXXXXXXXXXXXXXXXXXXX (XXXXXX). Prior to that placement, the student attended the  
Baltimore City Public Schools (BCPS) (Docs. a, e, g, h, i, and l - n).
2.        While the school staff at the XXXXX were able to obtain some documents from the student's  
educational record from the XXXXXXX, the XXX did not provide information about the  
credits that the student had earned and there is no documentation that the school staff at  
the XXXXXX made continuing efforts to obtain that information. The student was enrolled in  
English 9, World History, Conceptual Physics, Algebra I/Data Analysis, and Career  
Research Development classes without information about whether he had already earned  
credits in those classes (Docs. a, e, g, h, i, and l - n).
3.        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. t).

**Allegation #1b                    Amount of Educational Instruction Provided**

4.        The XXXXXX school schedule in effect during the period of time that the student was placed  
at the XXXXXX 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. d).
5.        Since January 29, 2015, the 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. d).
6.        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. p).

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

7.        There is evidence that, since July 2014, students placed at the XXXXX 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. q 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).
8.        A review of the records of students who have taken the GED Ready Test reflects that the student took the test, but did not achieve a score that reflected that he would be successful in taking the GED test (Review of educational records).

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

9.        During the period of time that the student was placed at the XXXXXXXX, there was not consistently an English teacher who was certified in that area of instruction. There is currently a certified English teacher at the XXXXXXXX (Review of staffing documents).
10.       During the period of time that the student was placed at the XXXX, there was a social studies teacher who was certified in that area of instruction and a certified special education teacher. However, there were no math or science teachers who were certified in those areas of instruction (Review of staffing documents).
11.       There is currently a science teacher who is certified in that area of instruction. However, as of August 21, 2015, there is no math teacher. Instruction in math is being provided by an instructional assistant (Review of staffing documents).

12. There is documentation that the principal is conducting classroom observations of noncertified teachers. However, there is no evidence of supervision of noncertified teachers by certified teachers prior to February 2015 (Review of staffing documents).
13. 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 #1a          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.03.02.014).

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 documentation of the credits earned by each student, which may be recorded on the Student Record Card 3 (SR 3) (*Maryland Student Records System Manual*, 2011).

In this case, the complainant alleges that the JSE did not ensure that the student was able to continue to take courses at the XXXX that he had previously taken at the BCJJC, thereby impeding his ability to make progress in the general curriculum. The complainant alleges that the lack of courses at the XXXX results from teachers not having access to the resources needed to ensure that a "consistent curriculum" that is aligned with the College and Career Readiness Standards because of the lack of textbooks in each area of instruction and the fact that teachers are required to obtain their own instructional materials independently (Doc. o).

Based on the Findings of Facts #1 and #2, the MSDE finds that the JSE did not ensure the appropriate transfer of the documents needed to ensure that the student was enrolled in core courses he required when he was placed at the XXXX. Therefore, this office finds that a violation occurred with respect to this aspect of the allegation because of the lack of appropriate transfer of the student's records and not because of a lack of the availability of core courses at the XXXXX.

However, based on the Finding of Fact #3, the MSDE finds that the JSE has taken steps to ensure the appropriate transfer of documents for the future. Therefore, no school-based corrective action is required.

#### **Allegation #1b                      Provision of Six (6) Hours of Instruction Per Day**

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 alleges that the student was not provided with a sufficient amount of instruction (six hours per day) to meet State standards designed to enable him to earn the credits required for graduation (Doc. o).

Based on the Findings of Facts #4 - #6, the MSDE finds that there is documentation that the student was provided with six (6) hours of instruction per day, consistent with State standards. Therefore, no violation is found with respect to this aspect of the allegation.

**Allegation #1c            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](http://www.prattlibrary.org)).

In this case, the complainant alleges that the XXX did not have sufficient resources to enable the student to prepare for the GED test (Doc. o).

Based on the Findings of Facts #7 and #8, 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 #1d            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).

The *JSE Special Education Policy and Procedures* in effect since August 10, 2014 state 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. f).

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. o).

Based on the Findings of Facts #9 - #13, 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 #11, the MSDE further finds that the JSE did not ensure that non-certified teachers were supervised by teachers holding certification prior to February 2015, consistent with its procedures.

In addition, based on the Finding of Fact #13, the MSDE finds that there is no information or documentation that the special education teacher is either certified or supervised by a certified teacher in the areas of instruction provided. Therefore, this office finds that a violation occurred.

However, 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.

**ALLEGATION 2      PROVISION OF SPECIAL EDUCATION INSTRUCTION IN  
MATH AND ENGLISH FROM BOTH GENERAL AND SPECIAL  
EDUCATION TEACHERS IN THE GENERAL EDUCATION  
CLASSROOM**

**FINDINGS OF FACTS:**

14. The student’s IEP required that he be provided with special education instruction in math and English in the general education classroom to be delivered by general and special education teachers (Doc. b).

15. At the time the student was placed at the XXXXXXXXX, there was one (1) special education teacher who was assigned to provide special education instruction in a separate special education classroom during periods of time when instruction was being provided in the general education classroom. There was not sufficient special education teaching staff to ensure that the special and general education teachers provided instruction in the general education classroom, as required by the IEP (Doc. d and review of staffing documents).
16. During the MSDE site visit that was conducted, the MSDE staff observed that there is a classroom at the XXXX, 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 for two (2) of the four (4) instructional periods per day. The special education teacher could provide instruction in the general education classroom for the remaining two (2) periods per day, if needed. The XXXXXXXXX also shares another special education teacher with the XXXXXXXXXX Center (XXXC). This staff member can also assist in the general education classroom. However, there is insufficient special education staff to provide instruction in both the general and separate special education classrooms throughout the school day (Doc. p and observations conducted during the site visit).
17. Ongoing recruitment efforts have been made and interviews have been conducted since December 10, 2014 in order to hire additional JSE special education teaching staff at the DJS facilities throughout the State (Review of staffing documents and <http://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).

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 (Doc. o).

Based on the Findings of Facts #14 - #17, the MSDE finds that there was insufficient special education teaching staff to ensure that the special education instruction was provided by both

general and special education teachers in the general education classroom, as required by the IEP. Therefore, this office finds that a violation occurred.

**ALLEGATION #3                      PROVISION OF INSTRUCTION WHEN NOT PERMITTED TO  
LEAVE THE RESIDENCE FOR SAFETY REASONS**

**FINDINGS OF FACTS:**

18. 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 about the DJS' removal of the students from school for up to eight (8) days in order to restore safety at the facility after the students became disruptive in the educational setting (Doc. c).
19. As a result of the incident that took place, all students were withheld from school at the XXXXXX 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:
  - 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 XXXXXXXXXX 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 XXXXXXXXXXXX in school for a full day and the rest of the students in school for one half (.5) day.
  - October 20, 2014 – Students in XXXXXX and XXXXXXXXXXXX in school for a full day and the rest of the students in school for one half (.5) day.
  - October 21, 2014 – Students in XXXXXX and XXXXXXXXXXXX in school for a full day and the rest of the students in school for one half (.5) day.
  - October 22, 2014 – Students in XXXXXXXX, XXXXXXXX, and XXXXXXXX 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 XXXXXXXXXXXXXXXX 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 XXXXXXXXXXXXXXXX to return to school for a full day (Doc. j and review of calendar).

20. At the MSDE site visit to the XXXXX, 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. s and review of the ISU).
21. The XXXXX 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 (Docs. d and p).
22. The DJS staff report that no students have been withheld from school since October 2014 and there is no information or documentation that indicates 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).

#### **DISCUSSION/CONCLUSIONS:**

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 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]. These exceptions apply exclusively to this population and do not apply for students who are placed in juvenile facilities (34 CFR §300.324).

The *JSE Special Education Policy and Procedures* in effect since August 10, 2014 state that, if the DJS withholds a student from school for more than five (5) days due 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.

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>2</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 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. o).

Based on the Findings of Facts #18 - #22, the MSDE finds that the student and other 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 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.

### **CORRECTIVE ACTIONS/TIMELINES:**

#### **Student-Specific**

The MSDE requires the JSE to provide documentation by February 1, 2016 of the steps taken to locate the student and to determine whether he is receiving educational services or is interested in receiving educational services, and if so, documentation that compensatory services have been offered. These services are to be designed to remediate the violations related to the JSE's failure to ensure that the student was placed in courses that would allow him to progress through the general curriculum and ensure that he was provided with special education instruction by both general and special education teachers in the educational placement required by the IEP. If the student is enrolled in another school system, the JSE must provide documentation of collaboration with that school system in the determination and provision of compensatory services.

#### **School-Based**

The MSDE requires the JSE to provide documentation by January 1, 2016 that the special education teacher at the XXX is supervised by a certified teacher in each area of instruction in

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<sup>2</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).

Grace Reusing, Esq.  
Ms. S. Beth Hart  
November 3, 2015  
Page 15

which she provides instruction in the separate special education classroom for which she does not hold certification, in accordance with the JSE procedures.

The MSDE further requires the JSE to provide documentation by January 1, 2016 of the steps taken to ensure that students who require special education instruction by both general and special education teachers in the general education classroom are provided with the special education, as required.

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

Grace Reusing, Esq.  
Ms. S. Beth Hart  
November 3, 2015  
Page 16

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