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Ms. S. Beth Hart
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RE: XXXXXXXXXXXX and Similarly-Situated
Students at the XXXXXXXXXXXX
Reference: #16-006

Dear Parties:

The Maryland State Department of Education, Division of Special Education/Early Intervention Services (MSDE, DSE/EIS), has completed the investigation of the complaint regarding special education services for above-referenced group of students. This correspondence is the report of the final results of the investigation.

ALLEGATIONS:

On July 13, 2015, the MSDE received a complaint from Grace Reusing, Esq., Office of the Public Defender, hereafter “the complainant,” on behalf of the above-referenced named student and all other similarly-situated students placed at the XXXXXXXXXXXX (XXXX), a Maryland State Department of Education Juvenile Services Education (JSE)¹ school. In that correspondence, the complainant alleged that the JSE violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to the above-referenced students.

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

There is a sixty (60) day timeline for completion of the complaint investigation process. Due to the number of student records to be reviewed, it was necessary to extend the timeline for completion of this Letter of Findings, pursuant to 34 CFR §300.152.

The MSDE investigated the following allegations:

1. The JSE has not ensured that students are provided with special education instruction from teachers who hold a valid Maryland certification in the areas of instruction provided since July 13, 2014,² in accordance with 34 CFR §§300.2, .18, .101, and COMAR 13A.03.02.03, .07, and .09, 13A.05.11.03 and .07, and 13A.12.01.01.
2. The JSE has not ensured that there is data to support revisions that are made to the educational placement for students who are placed at the XXXXX since July 13, 2014, in accordance with 34 CFR §300.324.
3. The JSE did not ensure that a comprehensive reevaluation of the named student was conducted on July 24, 2014 and did not ensure that assessments were administered consistent with instructions provided by the producer of the assessments, in accordance with 34 CFR §300.304.
4. The JSE did not obtain the named student's educational record in order to ensure that he was provided with access to instruction in core courses that would allow him to achieve credit requirements and assessments necessary to progress towards the standards for graduation from July 13, 2014 to November 17, 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, 13A.08.02, 13A.12.01.01, and *The Maryland Student Records System Manual*.
5. The JSE did not ensure that the named student was provided with special education and related services during periods of time when he was scheduled to receive special education services, but was not permitted to leave the residence for safety and security reasons while placed at the XXXXX, in accordance with 34 CFR §§300.2, .101, .103 and .323.

INVESTIGATIVE PROCEDURES:

1. On July 22, 2015 and September 8, 2015, the MSDE requested documents from the JSE. On the same date, the JSE provided the MSDE with documents.

² The complainant alleged that the violation occurred since April 10, 2014. However, she was informed, in writing, that only those violations that are alleged to have occurred not more than one year prior to the date that the complaint is received can be resolved through the State complaint procedure (34 CFR §300.153).

2. On July 23, 2015, the MSDE sent correspondence to the complainant that acknowledged receipt of the State complaint and identified the allegations subject to this investigation. On the same date, the MSDE notified the JSE of the allegations and requested that the JSE review the alleged violations.
3. On July 29, 2015, Ms. Anita Mandis, Chief, Complaint Investigation Section, MSDE, 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.
4. On August 25, 2015, Ms. Mandis, Ms. Vicky Ciulla, Monitoring and Accountability Specialist, MSDE, and Dr. Nancy Birenbaum, Family Support Services Specialist, MSDE, conducted a site visit at the XXXXX to review the educational records of the named student and other students placed by the DJS at the XXXXX since July 13, 2014.
5. On August 27, 2015, Ms. Mandis conducted a telephone interview with the complainant.
6. On September 2, 2015, the JSE provided documentation to the MSDE.
7. On September 14, 2015, Ms. Mandis met again with Ms. Nelson at the MSDE to review records.
8. On September 15, 2015, the complainant alleged an additional violation.
9. On September 17, 2015, the MSDE sent correspondence to the complainant that acknowledged receipt of the September 15, 2015 correspondence and identified an additional allegation for the investigation. On the same date, the MSDE notified the JSE of the additional allegation and requested that the JSE review the additional allegation.
10. On September 28, 2015, Ms. Mandis met with Ms. Crystal Fleming-Brice, Field Director, Instruction and Support, JSE, and Dr. Kim Lewis, JSE consultant, to review documentation.
11. 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 2011-2012 and 2012-2013 school years;
 - b. Student record card 7 (SR 7) for March 1, 2013 to March 28, 2013;
 - c. Electronic mail (email) message from the JSE to the DJS, dated October 17, 2014;
 - d. Progress reports from March 20, 2013 to November 11, 2014;
 - e. The XXXX school schedule in effect since April 2014;
 - f. SR 7 for April 15, 2013 to November 22, 2013;
 - g. SR 3 for the 2013-2014 school year;
 - h. IEP, dated May 16, 2012 and revised on May 7, 2013;

- i. SR 7 for March 14, 2014 to April 10, 2014;
- j. SR 7 for April 10, 2014 to November 17, 2014;
- k. Documentation of requests for and receipt of the named student's educational record since the student was placed at the XXXXX on April 10, 2014;
- l. Invitation to a May 30, 2014 IEP team meeting and written summary of the meeting;
- m. Notice and consent for assessment, dated May 30, 2014;
- n. The student's progress reports from June, August, and November of 2014;
- o. Invitation to a July 3, 2014 IEP team meeting and written summary of the meeting;
- p. Invitation to an August 14, 2014 IEP team meeting and written summary of the meeting;
- q. IEP, dated August 14, 2014;
- r. Logs of students' receipt of special education instruction in the separate special education classroom since January 2015;
- s. Correspondence from the XXX principal to the school staff, dated April 13, 2015;
- t. IEP, dated June 1, 2015;
- u. Correspondence from the complainant containing allegations of violations of the IDEA, received by the MSDE on July 13, 2015;
- v. Written summary of an IEP team meeting, dated August 20, 2015;
- w. Third quarter 2014 report to the Maryland Legislature from the Maryland Office of the Attorney General Juvenile Justice Monitoring Unit; and
- x. Description of the Intensive Service Unit (ISU).

BACKGROUND:

The named student is eighteen (18) years old, is identified as a student with an Other Health Impairment under the IDEA related to Attention Deficit Hyperactivity Disorder, Disruptive Behavior Disorder, and "a history of lead poisoning," and has an IEP that requires the provision of special education instruction and related services (Docs. h, p, and q).

From April 10, 2014 to November 17, 2014, the student was placed by the Maryland Department of Juvenile Services (DJS) at the XXXXXXXXXXXX (XXXXXX The student is currently residing at XXXXXXXXXXXX³ (Docs. a, b, d, f, g, i, and j, and interview with the complainant).

³ This is a non-profit residential job training program for at-risk adolescent males who are referred from social service and juvenile justice agencies (<http://www.XXXX.org/XXXXXX.html>).

**ALLEGATION #1: PROVISION OF SPECIAL EDUCATION INSTRUCTION BY
CERTIFIED TEACHERS**

FINDINGS OF FACTS:

1. The DJS placed the student at the XXXXXXXX from April 10, 2014 to November 17, 2014. During that period of time, 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 (Doc. j and review of staffing documents).
2. During that period of time, there were no science or math teachers who were certified in those areas of instruction. There has been a science teacher at the XXXXXXXX, who obtained full certification in that area of instruction on August 1, 2015 (Review of staffing documents).
3. Ongoing recruitment efforts have been made and interview panels conducted since July 10, 2014 in order to hire additional JSE teaching staff at the DJS facilities throughout the State. A math teacher who was hired subsequently left on August 21, 2015, and an instructional assistant is providing instruction in that area until another teacher can be recruited (Review of staffing documents).
4. There was, and continues to be, a teacher who holds certification in social studies and a special education teacher who is certified. However, 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).
5. There is documentation that the XXXXXXXX principal is conducting classroom observations in the classes where instruction is provided by non-certified staff. However, there is no evidence of supervision of noncertified teachers by certified teachers prior to February 26, 2015 (Doc. s and review of staffing documents).
6. On August 20, 2015, an IEP team meeting, including the student's mother, was held to address the concerns raised in the State complaint that was filed by the complainant. The written summary of that meeting states that, while the student was not provided with special education instruction by teachers who were certified in the content areas taught, they were supervised by certified teachers and the student made progress. Therefore, the team decided that the violation had no impact on the student (Doc. u).

LEGAL FRAMEWORK:

The implementing regulations of the IDEA explain that the federal requirements related to the education of students with disabilities apply to all political subdivisions of a State that are involved in the education of students with disabilities, including juvenile correctional facilities. These regulations require that each educational program for students with disabilities meet the educational standards of the State Education Agency (SEA) (34 CFR §§300.2 and .149).

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

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

DISCUSSION/CONCLUSIONS:

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

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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. u).

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. u).

Based on the Findings of Facts #1 - #5, the MSDE finds that the JSE has not ensured that all of the teachers at the XXXXXX have been certified in the areas in which they provide instruction or that they are supervised by certified teachers, consistent with the JSE procedures. Based on those Findings of Facts, the MSDE further finds that the JSE did not ensure that non-certified general education teachers were supervised by teachers holding certification prior to February 2015, consistent with its procedures.

Based on the Finding of Fact #5, the MSDE finds that the principal conducts observations in the classrooms of non-certified teachers, in accordance with the JSE procedures. However, based on the Finding of Fact #4, the MSDE finds that the JSE has not ensured that the special education teacher is either certified or supervised by a certified teacher in each area of instruction provided. Therefore, this office finds that a violation occurred.

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. In addition, corrective action has been required as a result of another State complaint investigation (#16-001) with respect to ensuring that the special education teacher is supervised in accordance with the JSE procedures. Therefore, no school-based corrective action is required with respect to the violation.

ADDITIONAL VIOLATION IDENTIFIED DURING THE COURSE OF THE INVESTIGATION:

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).

Based on the Findings of Facts #1 - #6, the MSDE finds that, on August 20, 2015, the IEP team determined that non-certified teachers were supervised by certified teachers while the student was placed at the XXXX. However, based on those Findings of Facts, this office finds that the non-certified teachers were not supervised by certified teachers until February 2015. Therefore, the MSDE finds that the team's decision was not consistent with the evidence, and that a violation occurred. However, as stated above, 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 EDUCATIONAL PLACEMENT DECISIONS

FINDINGS OF FACTS:

7. On August 14, 2014, the IEP team at the XXXX, including the named student's father, reviewed the named student's IEP, dated May 7, 2013. The May 7, 2013 IEP documented that the student's disability impacts reading vocabulary and comprehension, written language mechanics and expression, math calculation, and social, emotional, and behavioral functioning. The IEP developed on August 14, 2014 states that the student "is currently functioning significantly below grade level in all academic areas, including reading comprehension," and that he needs accommodations in all academic classes "in order to access the curriculum." The IEP further states that the student requires supplementary aids and services "in all academic settings." The IEP team documented its consideration of whether the IEP could be implemented in a general education classroom and stated:

[The student] requires a highly structured school environment with low student-to-staff ratio and implementation of individualized academic instruction with multiple accommodations and modifications. He also requires crisis intervention, a therapeutic environment, and therapy from a school social worker. Due to the nature, frequency and/or duration of services required for [the student] to benefit from his educational program, this service cannot be implemented in the general education environment (Docs. p and q).

8. The Least Restrictive Environment Section of the August 14, 2014 IEP states that the student is placed in a correctional facility and that he "will not have access to general education peers during the school day." However, it also states that the special education instruction would be provided in the general education classroom for all but four and one-half (4.5) hours per week (Docs. p and q).
9. On June 1, 2015, while the student was placed at the XXXXXXXXXXXXXXXXXXXX XXX (XXXXX), the IEP was amended to require the provision of special education

instruction in a separate special education classroom for thirty (30) hours per week (Doc. t).

10. On August 20, 2015, an IEP team meeting, including the student's mother, was held to address the concerns raised in the State complaint that was filed by the complainant. The written summary of that meeting states that the team reviewed the August 14, 2014 IEP and the student's schedule and determined that the student was provided with four and one-half (4.5) hours of special education instruction in the separate special education per week, which the team found to be consistent with the Least Restrictive Environment Section of the August 14, 2014 IEP. As a result, the IEP team did not identify any violations related to the student's educational placement while he was placed at the XXXX. However, the XXXX school schedule did not indicate that there was a special education classroom until September 15, 2014, and the XXXXX did not begin maintaining logs of students' receipt of special education instruction in the separate special education classroom until January 2015 (Docs. r and v).
11. A review of student educational records reflects that the IEP for students who require special education instruction in a separate special education classroom reflect that they receive varying amounts of instruction in that setting. Changes made to educational placements have been documented as based on the individual students' needs. For example, 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:

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

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

In this case, the complainant alleges that when students transfer to the educational program at the XXXXXX, the IEP is revised based on the availability of staff and other resources and not on the individual students' needs, and therefore, students are all given the same amount of special education instruction in the separate special education classroom (Doc. u).

Based on the Finding of Fact #11, the MSDE finds that there is no documentation that all students are provided with the same amount of special education instruction in the separate special education classroom.

However, based on the Findings of Facts #7 - #9, the MSDE finds that the IEP team's August 14, 2014 decision to provide all but four and one-half (4.5) hours per week of special education instruction to the named student in the general education classroom was not consistent with its decision regarding the student's needs. Therefore, this office finds that a violation occurred with respect to the allegation regarding the named student.

ADDITIONAL VIOLATION IDENTIFIED DURING THE COURSE OF THE INVESTIGATION:

The public agency must ensure that the IEP is implemented in the educational placement required by the IEP. In order to do so, the public agency must ensure that the IEP is written in a manner that is clear to all individuals with responsibility for development and implementation of the IEP (34 CFR §§300.101 and .323).

Based on the Finding of Fact #7, the MSDE finds that the Least Restrictive Environment Section of the named student's IEP is not written in a manner that is clear with respect to the educational placement in which special education instruction was to be provided, and that a violation occurred. As a result, the MSDE finds that the August 20, 2015 IEP team's decision that the student received special education instruction in the educational placement required by the IEP is not supported by the IEP document. Therefore, the MSDE finds that a violation occurred.

ALLEGATION #3 REEVALUATION

FINDINGS OF FACTS:

12. The IEP erroneously states that the last reevaluation was conducted on July 24, 2014. There is documentation that the last reevaluation was conducted on July 3, 2014⁴ (Docs. l - q and t).

⁴ Allegation #3 was identified for investigation based on the belief that the reevaluation had occurred within one year of the date that the State complaint was filed with the MSDE on July 13, 2015.

13. A review of internal correspondence between the JSE staff and the XXXXX school staff since August 2014 reflects that progressive steps are being taken to improve the accuracy of student educational records at the XXXXX (Review of internal JSE correspondence).

DISCUSSION/CONCLUSIONS:

When conducting a reevaluation, the public agency must ensure that the reevaluation is sufficiently comprehensive to identify all of the needs that arise out of the disability. If the IEP team determines that additional data is needed to complete a reevaluation, the public agency must also ensure that assessments that are administered are done so in accordance with the instructions provided by the producer of the assessments (34 CFR §300.304).

In order for an allegation of a violation of the IDEA to be addressed through the State complaint investigation procedure, the alleged violation must have occurred within one year of the date that the State complaint was received by the MSDE (34 CFR §300.153).

In this case, the complainant alleges that the IEP team should have determined that additional data was needed when completing the last reevaluation. The complainant alleges that the IEP team instead relied upon the results of an assessment that was not conducted in accordance with the instructions provided by the producer of the assessment, and therefore, did not provide valid results (Doc. u).

Based on the Finding of Fact #12, the MSDE finds that a reevaluation was not conducted within one (1) year of the date that the State complaint was filed, and therefore, that a reevaluation was not conducted within the time period that can be addressed through this investigation. Therefore, the reevaluation requirements are not applicable and this office does not find that a violation occurred with respect to the investigation.

ADDITIONAL VIOLATION IDENTIFIED DURING THE COURSE OF THE INVESTIGATION:

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).

Based on the Findings of Facts #12 and #13, the MSDE finds that the JSE did not ensure that the named student's IEP includes accurate information about the date of the last reevaluation and that a violation occurred. However, based on those Findings of Facts, the MSDE also finds that the JSE has been taking steps to ensure the improvement of accuracy of student educational records at the XXXX.

**ALLEGATION #4 MAINTENANCE OF EDUCATIONAL RECORDS IN
ORDER TO ENSURE ACCESS TO INSTRUCTION IN
CORE COURSES**

FINDINGS OF FACTS:

14. The DJS placed the named student at the XXX on April 10, 2014. Immediately prior to that, the DJS had placed the student at the XXXXXXXXXXXXXXXXXXXXXXXXXXXX (XXXXXXXXXX) from March 14, 2014 to April 10, 2014. Prior to his placement at XXXXXXXXXXXX, the DJS had placed the student at the XXXXXXXXXXXXXXXXXXXXXXXX (XXXXXXXXXXXXXXXXXX) from April 15, 2013 to November 22, 2013 (Docs. a, b, d, f, g, i, and j).
15. The school staff at the XXXX documented that requests were made for the student's educational record to the school staff at XXXXXXXXXXXX on May 2 and 29, 2014, and that a request was also made to the nonpublic school the student attended in the community on June 17, 2014 and August 28, 2014. The documentation reflects that the school staff at the XXXXX were attempting to obtain information about the credits the student earned in the 9th grade (Doc. k).
16. The school staff at the XXXXX never received a response from the nonpublic school (Doc. k).
17. The Student Record Card 7 (SR 7) from XXXXXXXXXXXXXXXXXXXX, which was provided to the school staff at the XXXXX on June 6, 2014, reflects that the student was taking a 10th grade English class in those facilities. The student was, therefore, enrolled in an English 10 course at the XXXXX (Doc. f).
18. However, when the Student Record Card 3 (SR 3) from XXXXXXXXXXXXXXXXXXXX was received on August 27, 2014, stating that the student had already earned a credit in English 10, the student was enrolled in an English 9 class (Doc. g).
19. When the SR 3 from the XXXXXXXXXXXXXXXXXXXX was received on August 27, 2015 stating that the student earned a credit for English 9 during the 2011-2012 school year, the student was moved again, this time to an English 11 class (Doc. a).
20. On August 20, 2015, an IEP team meeting, including the student's mother, was held to address the concerns raised in the State complaint that was filed by the complainant. The written summary of that meeting states that the IEP team found that "diligent efforts"

were made by the school staff at the XXXX to obtain the student's educational records in order to ensure that he was placed in classes that would allow him to progress through the general curriculum, and that the student was placed in "correct classes" based on the information that was made available at the time. The IEP team documented that it offered to hold another team meeting "to discuss credit options" (Doc. v).

DISCUSSION/CONCLUSIONS:

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). As stated above, 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).

Within two (2) days after receiving notice that a student in State-supervised care seeks to enroll, the public agency in which the student is seeking enrollment must make a written request for the educational record of the student in State-supervised care from the public agency in which the student was previously enrolled. Within three (3) school days after receiving notice, the public agency in which the student in State-supervised care was previously enrolled must send the student's record to the public agency making the request (COMAR 13A.08.07.03).

The *JSE Special Education Policies and Procedures Manual*, August 10, 2014, states that school staff must request the record from the last known school of enrollment within forty-eight (48) hours of receiving notice of the student's entry into a DJS facility. The school staff are required to maintain contact logs documenting at least three (3) diligent attempts within five (5) days to obtain the record and must continue their efforts until the record is obtained.

In this case, the complainant asserts that students are not able to complete credit requirements because the JSE is not ensuring that the school staff obtain the required information from the educational record, and that this impedes the ability of students to make progress in the general curriculum (Doc. u).

Based on the Findings of Facts #14 - #19, the MSDE finds that the JSE did not ensure that information needed to place the student in courses that would allow him to progress through the general curriculum was requested and provided within the timelines required by the regulations and by its own procedures. Therefore, this office finds that a violation occurred.

ADDITIONAL VIOLATION IDENTIFIED DURING THE COURSE OF THE INVESTIGATION:

Based on the Findings of Facts #14 - #20, the MSDE finds that, on August 20, 2015, the IEP team decided that appropriate efforts were made to obtain the educational record. However, based on those Findings of Facts, this office finds that there was a delay in attempts to obtain the record. As a result, this office finds that the team's decision was not consistent with the evidence and that a violation occurred.

ALLEGATION #5 PROVISION OF INSTRUCTION WHEN NOT PERMITTED TO LEAVE THE RESIDENCE FOR SAFETY REASONS

FINDINGS OF FACTS:

21. 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 students from school for up to eight (8) days in order to restore safety at the facility after the students became disruptive (Doc. w)
22. As a result of the incident that took place, all students were withheld from school on October 10, 2014. 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 XXXXXXXXXXXX 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 XXXXXXXXXXXX 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 XXXXXXXXXXX, XXXXX, 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 XXXXXXXXXXXXXXXX in school for a full day; students in XXXXXXXXXXXX in school for one half (.5) day.
- October 24, 2014 – Students in all but XXXXXXXXXXXXXXXX in school for a full day; students in XXXXXXXXXXXXXXXX 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. c and review of calendar).

23. 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. x and review of the ISU).
24. The XXXXXXXX school schedule in effect since January 29, 2015 reflects that there are general education teachers scheduled to provide instruction in the ISU for each class period of the day (Doc. e).
25. The DJS staff report that no students have been withheld from school since October 2014 and there is no information or documentation indicating otherwise. There is also no documentation that the named student was removed from school prior to October 2014 (Review of the educational record and interview with the DJS staff).

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).

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

The *JSE Special Education Policy and Procedures* 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 (6th) 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 placement⁵ 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 and 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. u).

Based on the Findings of Facts #21 - #25, the MSDE finds that students with disabilities placed at the XXX missed up to five (5) days of school as a result of safety procedures that were implemented at the XXX in October 2014, and there is no documentation that the named student was removed from school in excess of ten (10) 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 the IDEA disciplinary protections. Therefore, this office finds no violation.

⁵ 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).

CORRECTIVE ACTIONS/TIMELINES:

Student-Specific

The MSDE requires the JSE to provide documentation by December 1, 2015 that the IEP has been amended to accurately reflect the dates on which evaluations have been conducted.

The MSDE also requires the JSE to provide documentation by February 1, 2016 of the steps taken to locate the student and to offer compensatory services to remediate violations related to the August 14, 2014 educational placement determination, and not ensuring that he was placed in courses that would allow him to progress through the general curriculum.

Similarly-Situated Students

The MSDE requires the JSE to provide documentation by February 1, 2016 of the identification of all students placed at the XXX between July 13, 2014 and November 17, 2014 who had an IEP that was developed by the JSE that contained inaccurate information regarding the latest reevaluation. For each student identified, the JSE must provide documentation that the educational record has been amended to reflect accurate information.

The MSDE also requires the JSE to provide documentation by February 1, 2016 of the identification of all students placed at the XXXXX between July 13, 2014 and November 17, 2014:

- a. for whom IEP team decisions were made about the student's program or placement that were not supported by data; or
- b. who were not enrolled in a core course that they required and were taking prior to placement at the XXXXX.

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

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

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

School-Based

The MSDE requires the JSE to provide documentation by February 1, 2016, of the steps it has taken to ensure that XXXX school staff properly implements the requirements for the following:

- a. Ensuring that IEP team decisions are based on data;
- b. Ensuring that IEP team decisions are accurately documented;
- c. Ensuring that IEP team decisions are written in a manner that is clear to all individuals involved in the development and implementation of the IEP; and
- d. Making appropriate efforts to obtain educational records in order to ensure that students are placed in appropriate courses that will allow them to progress through the general curriculum, in accordance with the JSE procedures.

The documentation must include a description of how the JSE will evaluate the effectiveness of the steps taken and monitor to ensure that the violations do not recur.

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

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Ms. S. Beth Hart
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the identification, evaluation, placement, or provision of a Free Appropriate Public Education for the students, including issues subject to this State complaint investigation, consistent with the IDEA. The MSDE recommends that this Letter of Findings be included with any request for mediation or due process.

Sincerely,

Marcella E. Franczkowski, M.S.
Assistant State Superintendent
Division of Special Education/
Early Intervention Services

MEF/am

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