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November 17, 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: XXXXX  
Reference: #16-025

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 the above-referenced student. This correspondence is the report of the final results of the investigation.

**ALLEGATIONS:**

On September 18, 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)<sup>1</sup> 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 did not ensure that the student was provided with the special education instruction in the educational placement required by the Individualized Education Program (IEP) while he was placed by the Maryland Department of Juvenile Services (DJS) at the XXXXXXXXXXXXXXXXXXXXXXXX (XXXXX), and the XXXXXXXXXXXXXXXXXXXXXXXX (XXXXX) from September 2014<sup>2</sup> to April 10, 2015, in accordance with 34 CFR §§300.101 and .323.
2. The JSE did not ensure that the student was provided with the amount of counseling as a related service that was required by the IEP while he was placed by the DJS at XXXX and the XXXX from September 2014<sup>2</sup> to April 10, 2015, in accordance with 34 CFR §§300.101 and .323.
3. The JSE did not ensure that the basis of the IEP team's February 25, 2015 decisions to revise the program and placement were consistent with the data regarding the student's needs, in accordance with 34 CFR §§300.101 and .324.
4. The JSE did not ensure that proper procedures were followed at the XXXXXXXXXXXX (XXX) when the student was transitioned back into the community on September 3, 2015. This includes ensuring the continuance of educational services by maintaining and transferring accurate educational records in a timely manner, in accordance with 34 CFR §300.624, COMAR 13A.08.02 and *The Maryland Student Records System Manual*.
5. The JSE did not ensure that educational instruction was provided that meets the MSDE's educational standards from September 2014 to September 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. The complaint specifically alleges the following:
  - a. That the student was not provided with access to instruction in core courses that allowed him to achieve credit requirements and assessments necessary to progress towards the standards for graduation;
  - b. That the student was not provided with the opportunity to work towards obtaining student service requirements necessary for graduation;
  - c. That the student was not provided with the opportunity to participate in a program that prepared him to successfully obtain a Maryland High School Diploma by examination through the General Educational Development (GED) Testing Program; and

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<sup>2</sup> While the complainant alleged that the violation occurred while the student was placed at the XXXXXXXXXXXX XXXXXXXXXXXX prior to September 2014, she was informed, in writing, that only those violations that are alleged to have occurred within one (1) year of the date that the State complaint is filed can be addressed through the complaint investigation procedure (34 CFR §300.153).

- 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.

**INVESTIGATIVE PROCEDURES:**

1. On September 23, 2015, the MSDE sent correspondence to the complainant that acknowledged receipt of the correspondences containing allegations of violations of the IDEA and identified the allegations subject to this investigation. On the same date, the MSDE notified the JSE of the allegations and requested that JSE review the alleged violations.
2. On September 29, 2015, Ms. Anita Mandis, Section Chief, Complaint Investigation Section, MSDE, met with Ms. Crystal Fleming-Brice, Field Director, Instruction and Support, JSE, to discuss the allegations.
3. On September 30, 2015, October 19, 2015, and November 3, 2015, the MSDE requested documents from the JSE.
4. On October 8, 2015, Ms. Mandis and Ms. Vicky Ciulla, Monitoring and Accountability Specialist, MSDE, conducted a site visit at the XXXXX. At that time, documents were provided to the MSDE. In addition, interviews were conducted with Mr. XXXXXXXX, Principal, and Ms. XXXXXXXX, Special Education Teacher. Ms. Fleming-Brice and Ms. Dawn Hubbard, Compliance Specialist, JSE, participated in the site visit as representatives of the JSE and to provide information on the JSE's policies and procedures, as needed.
5. On October 15, 2015, Ms. Mandis and Dr. Nancy Birenbaum, Family Support Services Specialist, MSDE, conducted a site visit at XXXXX. At that time, additional documents were provided to the MSDE. In addition, interviews were conducted with Mr. XXXXXXXX, Case Manager; and Mr. XXXXXXX, science and social studies teacher. Ms. Hubbard participated in the site visit as a representative of the JSE and to provide information on the JSE's policies and procedures, as needed.
6. On October 19, 2015 and November 10, 2015, the JSE provided the MSDE with documentation.
7. On November 10 and 13, 2015, the MSDE requested information from the DJS, which was provided on November 11 and 16, 2015, respectively.

8. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
  - a. Profile dates from XXXX for the period of July 9, 2013 through January 28, 2015;
  - b. IEP, dated January 14, 2014;
  - c. Related service logs for counseling from September 2014 to July 2015;
  - d. Student record card 7 (SR 7) from July 14, 2014 to September 10, 2014;
  - e. SR 7 from September 17, 2014 to October 9, 2014;
  - f. The class attendance logs from September and October 2014, and January 2015 and sample activities logs from September 2014;
  - g. Communication log from September 11, 2014 to October 1, 2014 and January 7 to 27, 2015;
  - h. Report of the student's progress towards achievement of the annual IEP goal to improve self-management, dated September 11, 2014;
  - i. Requests for records, dated September 11 and 17, 2014 and January 7 and 14, 2015;
  - j. Student record card 3 (SR 3), dated September 12, 2014;
  - k. Correspondence to the student's parent from the XXXX school staff, dated October 1, 2014;
  - l. SR 7 from January 12, 2015 to January 28, 2015;
  - m. Progress reports, dated January 21, 2015 and February 4, 2015;
  - n. Description of the Basic Achievement Skills Inventory (BASI) Survey;
  - o. SR 7 from January 29, 2015 to April 10, 2015;
  - p. Requests for records, dated January 29, 2015 and January 6 and 9, 2015;
  - q. Logs of students at the XXXX who were provided with special education instruction from special education teachers outside of the general education classroom from February 9 to 25, 2015;
  - r. The XXXX master schedule;
  - s. Attendance sheets for students provided with instruction out of the general education classroom at the XXXXX in February 2015;
  - t. Written summary of the February 25, 2015 IEP team meeting;
  - u. IEP, dated February 25, 2015;
  - v. Progress reports for February 2015 to May 2015;
  - w. Request for records, dated April 10, 2015;
  - x. SR 7 from April 10, 2015;
  - y. Correspondence from the principal of the XXX to the XXX and XXXXX XXXXXXXXXXXXXXX staff, dated April 13, 2015;
  - z. Reports of the student's progress towards achieving the annual IEP goals, dated April 17, 2015;
  - aa. Request for records from the DJS staff to the JSE staff, dated September 8, 2015;
  - bb. Facsimile transmission report, dated September 8, 2015;

- cc. Correspondence from the complainant alleging violations of the IDEA, received by the MSDE on September 18, 2015;
- dd. Maryland Department of Juvenile Services *Data Resource Guide, Fiscal Year 2014*;
- ee. Records of textbook purchases;
- ff. The *JSE Program of Studies - Course Offerings and Descriptions*;
- gg. The *JSE Special Education Policy and Procedures*;
- hh. The JSE Staff Day Agenda, dated October 14, 2015;
- ii. Sample of a physical education course that was provided to a student;
- jj. Sample of a health course that was provided to a student;
- kk. Report from the DJS' database of the student's placements;
- ll. Reports from the JSE, received by the MSDE on November 11 and 16, 2015;
- mm. Intake form, dated January 13, 2015; and
- nn. Local school system annual service learning experience tally, dated June 16, 2015 and description of student service learning projects at the XXX.

**BACKGROUND:**

The student is sixteen (16) years old, is identified as a student with an Emotional Disability under the IDEA, and has an IEP that requires the provision of special education instruction and related services (Docs. b and u).

During the time period covered by this investigation, the student was placed by the Maryland Department of Juvenile Services (DJS) as follows:

- July 14, 2014 to September 10, 2014 – the XXXXXXXXXXXXXXXXXXXX (XXXXXXXXXX);
- September 10, 2014 to October 9, 2014 – XXXXXXXXXXXXXXXXXXXX (XXXXXX);
- October 9, 2014 to January 6, 2015 – returned to the community;
- January 6, 2015 to January 28, 2015 – XXXXXX;
- January 28, 2015 to April 10, 2015 – the XXXXXXXXXXXXXXXXXXXX (XXXX);
- April 10, 2015 to September 3, 2015 – the XXXXXXXXXXXX (XXX) (Doc. and interview information from the JSE staff); and
- September 3, 2015 - returned to the community (Docs. a, d, e, g, i - m, o, p, s, u, w, x, zx, aa, and kk).

During the course of the investigation, the student was placed by the DJS at XXXXXX (Interview with the DJS staff).

**ALLEGATION #1 PROVISION OF SPECIAL EDUCATION INSTRUCTION IN THE  
REQUIRED EDUCATIONAL PLACEMENT FROM  
SEPTEMBER 10, 2014 TO FEBRUARY 25, 2015 – XXXXXX AND  
XXXXXX**

**FINDINGS OF FACTS:**

1. The DJS placed the student at XXXXX from September 10, 2014 to October 9, 2014 and from January 6 to 28, 2015. The IEP in effect at that time required the provision of special education instruction in all academic areas from a special education teacher outside of the general education classroom setting. The IEP states that the student required this placement due to his need for therapeutic services to assist him with use of appropriate coping skills (Docs. a and b).
2. On October 1, 2014, the XXXX school staff sent the student's parent correspondence indicating that the IEP was being implemented and that services were initiated on September 18, 2014 (Doc. k).
3. Class attendance and activity logs from September and October 2014 and January 2015, and sample activity logs from September 2014 reflect that the student was provided with special education instruction in a separate special education classroom while placed at XXXX. However, progress reports and class attendance logs reflect that, when placed at XXXX, the student was provided with special education instruction from only general education teachers (Docs. f, h, and m).
4. On January 28, 2015, the DJS placed the student at the XXXX (Docs. a, l, o, and kk).
5. On February 5, 2015, the XXXXXXXXXXXXXXX school staff requested and received the IEP from the DJS. On the same date, the student's teachers signed receipt of information about the requirements of the IEP (Doc. p).
6. A review of the student's progress reports from February 2015, XXXX school schedule, and the logs of students who were provided with instruction outside of the general education classroom, reflects that the student was provided with special education instruction in a separate special education instruction classroom by special education teachers (Docs. q, r, and v).
7. The IEP was revised on February 25, 2015 at the XXXXX to require the provision of special education instruction in the general education classroom from a general education teacher and an instructional assistant (Doc. u).
8. The progress reports from the XXXXX for March 2015 reflect that special education instruction was provided by general education teachers at that time (Doc. z).

9. The reports of the student's progress towards achieving the annual IEP goals, dated April 17, 2015, reflect that the goals were being addressed, that accommodations were being provided in the classroom, and that the student was making sufficient progress (Doc. v).

### **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 Free Appropriate Public Education (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, the student was not provided with the special education instruction in the educational placement required by his IEP while he was placed at XXXX and the XXXX (Doc. cc).

Based on the Findings of Facts #1 - #9, the MSDE finds that, while there is documentation that the student was provided with special education instruction in the placement required by the IEP, there is no documentation that he was provided with special education instruction from a special education teacher while placed at XXXXX during September 2014, October 2014, and January 2015, as required by the IEP. Therefore, this office finds that a violation occurred.

### **ALLEGATION #2                      PROVISION OF COUNSELING SERVICES FROM SEPTEMBER 2014 TO FEBRUARY 25, 2015 – XXXXX AND XXXXX**

### **FINDINGS OF FACTS:**

10. The student's IEP requires the provision of one-half (.5) hour of counseling services per week (Docs. b and u).
11. A review of counseling services provider logs from September 2014 to February 25, 2015 reflects the following:

- The student met with the counselor for one-half hour (.5) on September 19 and 26, 2014, and on October 3 and 7, 2014;
- Services totaling one and one-half (1.5) hours were provided during the third (3<sup>rd</sup>) and fourth (4<sup>th</sup>) weeks of January 2015, but no services were provided during the last week of the month;
- Services were provided during the first (1<sup>st</sup>), second (2<sup>nd</sup>), and fourth (4<sup>th</sup>) weeks of February 2015, but no services were provided during the third (3<sup>rd</sup>) week of the month;
- There is no documentation that the student met with the counselor during the first (1<sup>st</sup>) week of March 2015; and
- The student met with the counselor once per week from March 9, 2015 to April 9, 2015 (Doc. c).

### **DISCUSSION/CONCLUSIONS:**

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

Based on the Findings of Facts #10 and #11, the MSDE finds that the student did not consistently receive services as required by the IEP during January 2015, February 2015, and March 2015. Therefore, this office finds that a violation occurred with respect to this aspect of the allegation.

### **ALLEGATION #3: IEP TEAM'S FEBRUARY 25, 2015 DECISIONS - XXXXX**

### **FINDINGS OF FACTS:**

12. At the IEP team meeting held on February 25, 2015 at the XXXX, the team decreased the amount of special education instruction required to be provided from twenty-nine and one-half (29.5) hours per week to fifteen (15) hours per week. The team also decided that the special education instruction could be provided in the general education classroom instead of the separate special education classroom (Docs. t and u).
10. The documentation of the team's February 25, 2015 decisions indicates that the basis for these decisions was that the student made "marked achievement" in reading and writing over the past year and had "met his annual [IEP] goals." The team documented that, although the student's Basic Achievement Skills Inventory (BASI) Survey scores indicate that he is functioning at the third (3<sup>rd</sup>) grade level in reading, his success with the DJS



Challenge Program<sup>3</sup> resulted in his ability to produce classwork that reflects that he is able to complete grade level work. Therefore, the team decided that his present levels of performance in this area was at the ninth (9<sup>th</sup>) grade level and that he would be successful “with or without accommodations” (Docs. n, t, and u).

14. However, the IEP also states that the student “continues to experience difficulty controlling his emotions” and that “he often times will refuse to follow directions,” engages in “disrespectful behavior towards staff attempting to redirect him,” and has to be removed from class for “time out” (Docs. t and u).
15. The IEP states that, although the student’s BASI scores indicate that he is functioning at the third (3<sup>rd</sup>) grade level in written language expression, the team found that the student is performing at the eighth (8<sup>th</sup>) grade level in written language expression on classwork. The IEP states that the student is able to “expand simple sentences into one complete thought and use punctuation marks correctly in sentences.” However it also states that “his responses tend to contain many grammatical errors (i.e., lacking punctuation and capitalization),” but that “the teacher can understand the point [the student] is trying to make” (Docs. t and u).
16. The IEP also states that, in math, the student is performing at the sixth (6<sup>th</sup>) grade level and that he is “hard working when motivated and not distracted by other students,” but that he “needs to work on controlling his temper and focusing on his work or assignments given if he wants to be in the general education setting” (Docs. t and u).

### **DISCUSSION/CONCLUSIONS:**

The public agency must offer each student with a disability a FAPE through an IEP that includes special education and related services that address the student’s identified needs. The special education services that are provided are to be based on the 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).

Grace Reusing, Esq.

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<sup>3</sup> This is a behavioral management program implemented in the DJS facilities, where behavioral expectations are established within a structured daily routine using positive reinforcers and modeling in order to encourage youth to accept responsibility for their behavior and learn problem solving skills (Doc. dd).

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 #12 and #13, the MSDE finds that the IEP team determined that the student had been able to produce grade level work in reading due to his appropriate behavior. However, based on the Findings of Facts #14 and #16, the MSDE finds that the data about the student's behavior did not support the decision that he had been demonstrating appropriate behavior.

Based on the Finding of Fact #15, the MSDE finds that the IEP team decided the student's current levels of performance in written language based on the determination that he was able to use punctuation correctly. However, based on the Finding of Fact #15, the MSDE finds that the data about the student's use of punctuation did not support the decision that he was using it correctly.

Therefore, the MSDE finds that the IEP team's decisions about the student's levels of performance in reading and written language were not consistent with the data. Thus, this office finds that a violation occurred with respect to the development of the student's education program.

Based on the Findings of Facts #12 and #13, the MSDE finds that the IEP team decided to decrease the amount of special education instruction to be provided and to provide it in a less restrictive environment based on the determinations made about the student's improved behavior and achievement in reading and writing. However, based on the Findings of Facts #14 - #16, the MSDE finds that not only was the data regarding the student's levels of performance inconsistent with the team's decisions, but that the decision to change the educational placement was inconsistent with the math teacher's report that his behavior needs to improve before a change in placement can be successful. Therefore, this office finds that a violation occurred with respect to the determination of the student's educational placement.

**ALLEGATION #4:                    MAINTENANCE AND TRANSFER OF  
STUDENT EDUCATIONAL RECORDS - XXX**

**FINDING OF FACT:**

17. There is documentation that, on September 8, 2015, the DJS requested documents from the student's educational record from the JSE and that the records were provided to the DJS on the same date (Docs. aa and bb).

## **DISCUSSION/CONCLUSIONS:**

The Maryland Department of Juvenile Services *Data Resource Guide, Fiscal Year 2014* states that youth returning home from a committed placement are supervised by DJS case managers, who assist the youth with school re-entry, employment, and other services. It states that the case management specialist “is responsible for linking services for the youth and family” and monitoring the youth’s adjustment back to the community. The Guide further indicates that a needs assessment is conducted prior to a youth’s release into the community, which provides guidance to the case managers as they coordinate and plan for community-based services (Doc. ).

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).

As indicated above, 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). In order to ensure the provision of appropriate services to a transferring student, the new public agency must take reasonable steps to promptly obtain the student’s educational record, including the IEP and supporting documents and any other records relating to the provision of special education or related services to the student, from the previous public agency in which the student was enrolled (34 CFR §300.323).

Upon exiting a student, schools have ten (10) consecutive school days to ensure that the student is receiving educational service. The sending school is held accountable for the student until the receiving school provides acceptable documentation of the receipt of the documents needed to provide the student with appropriate services. However, the sending school is not to send the records until receiving an official request from the receiving school (*Maryland Student Records System Manual*, 2011).

The complainant alleges that the JSE did not follow through with the DJS caseworker to ensure that the student was enrolled in a community-based program and had records transferred to that program when he was transferred from the XXXX (Doc. cc).

Based on the Finding of Fact #17, the MSDE finds that the documentation does not support the allegation. Therefore, a violation is not found with respect to the allegation.

**ALLEGATION #5: EDUCATION PROGRAM THAT MEETS  
STATE STANDARDS – XXXXXX, XXXXX, AND THE XXX**

**FINDINGS OF FACTS:**

**Allegation #5a Access to Instruction in Core Courses**

18. The *JSE Program of Studies – Course Offerings and Descriptions* includes core courses in English, mathematics, science, social studies, and technology education. 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 requires (Docs. ff, ii, and jj).
19. Instruction is provided using a combination of textbooks and resources obtained by the teachers from the internet. The JSE has developed a uniform curriculum that is aligned with the College and Career Readiness Standards in order to ensure consistency of the coverage of material in each course provided at all DJS facilities. This curriculum was distributed to all JSE teachers at a staff meeting held on October 14, 2015. The JSE has also ordered text books to be used uniformly in all DJS facilities (Docs. ee, hh, and review of text books and resource materials and the JSE curriculum maps for core subject areas).
20. The DJS placed the student at XXXXXXXX from September 10, 2014 to October 9, 2014 (Docs. a, e, and kk).
21. On September 11 and 17, 2014, the XXXXX school staff requested the student's educational record from XXXXXXXXXXXX, where he had been placed by the DJS from July 14, 2014 to September 10, 2014 (Docs. g and i).
22. On September 17, 2014, the XXX school staff received a response to their request from the XXXXXXXXXXXX staff. The response includes a Student Record Card 7 (SR 7) reflecting that the student was taking English 9, conceptual algebra, biology, environmental science, government, and a career, research, and development course. It also included a Student Record Card 3 (SR 3) reflecting that the student had earned one-half (.5) credit in English 9 and one-half (.5) credit in conceptual algebra (Docs. d, g, and i).
23. The SR 7 reflects that the student was continued in all of the same courses as he had been taking at XXXXXXXXXXXX, except that he was enrolled in environmental science instead of biology (Docs. d and e).
24. On October 9, 2014, the DJS returned the student to the community (Docs. e and kk).

25. The DJS placed the student at XXXX from January 6, 2015 to January 28, 2015. He was enrolled in the education program on January 12, 2015 (Doc. l and kk).
26. Based on information obtained during the intake process on January 13, 2015 that the last school the student had attended was XXXXX, the student was enrolled in the classes he was taking prior to his release back into the community in October 2014 (Doc. mm).
27. On January 28, 2015, the DJS placed the student at the XXXX (Docs. o and kk).
28. On January 29, 2015 and February 6, 2015, the XXXXX school staff requested the educational record from XXXXX (Doc. p).
29. On February 6 and 9, 2015, the XXXX school staff received the student's requested educational records from XXXX. These records included a student record card 7 (SR 7) from XXXXXX, indicating that the student had been taking English 9, government, conceptual physics, conceptual algebra, career, research and development, and office systems management courses (Docs. l and p).
30. The SR 7 reflects that the student was enrolled in all of the same courses as he had been taking at XXXX, except that he was placed in algebra 1 instead of conceptual algebra (Docs. l and o).
31. On April 10, 2015, the DJS placed the student at the XXXX. On the same date, the XXX requested the student's educational record from the XXXXX (Docs. w, x, and kk).
32. On April 13, 2015, the XXXX provided the XXXXX with copies of documents from the student's educational record. The DJS staff report that, after having enrolled the student in courses reflected on the SR 7, information was received from the XXXXX progress reports reflect that the student was being provided with instruction in biology instead of conceptual physics at the XXXX. Since the student was well into the curriculum of conceptual physics, the decision was made to continue to provide instruction in that course in order to enable the student to earn credit for that class (Docs. o, x, ll, and review of documents from the student's educational record).

#### **Allegation #5b**

#### **Opportunity to Obtain Student Service Requirements**

33. XXX is a DJS detention center, which is designed to provide a short-term placement for students. Students are placed at XXXX prior to disposition on average for 17.8 days, pending placement after disposition on average for 20.4 days, and pending placement after being ejected from a committed program on average for 30.3 days. The JSE reports that this is insufficient time for a student to participate in a service learning project and complete the reflection requirements in order to earn service learning hours (Doc. dd and interviews with the JSE staff).

34. The XXXXX is a DJS detention center, which is designed to provide a short-term placement for student. Students are placed at the XXXXX prior to disposition on average for 10.9 days, pending placement after disposition on average for 31.8 days, and pending placement after being ejected from a committed program on average for 37.1 days. The JSE reports that this is insufficient time for a student to participate in a service learning project and complete the reflection requirements in order to earn service learning hours (Doc. dd and interviews with the JSE staff).
35. There is documentation that, while the student was placed at the XXX, students were provided with the opportunity to earn service learning hours through projects that have been included in the instruction in English, science, and career technology courses. An example is the Aquaponics Program, in which students participate through the science class. During class, students are involved in an aquaculture project in which they plan flowers and vegetables, care for fish, and learn about the ecosystem they create (Doc. nn, tour of the Aquaponics Program, and review of educational records conducted during recent State complaint investigations regarding other students).

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

36. There is evidence that students placed at XXXX, the XXXX, and the XXX 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 a "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.
  - 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 or who do not pass the GED test will be able to continue to make progress in the general curriculum (Review of instructional booklets and work books, review of paper records of GED Ready Test administration and of diplomas earned by students placed at XXXXX, and review of electronic records of the GED Ready Test administration and of diplomas earned by students placed at the XXXXX and the XXX).

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

37. The progress reports and class attendance logs reflect that, when placed at XXXX, the student was provided with special education instruction in English and science by general education teachers who did not hold certification in the areas of instruction provided (Docs. f, m, and review of staffing documents).
38. The progress reports and class attendance logs reflect that, when placed at XXXX, the student was provided with special education instruction in social studies and math by general education teachers who were certified in the areas in which they provided instruction (Docs. f, m, and review of staffing documents).
39. The progress reports from February 2015 reflect that, when placed at the XXXXX that month, the student was provided with special education instruction in all content areas by special education teachers who did not hold certification in the content areas taught (Doc. v and review of staffing documents).
40. The progress reports from March 2015 reflect that, when placed at the XXXX that month, the student was provided with special education instruction in English and social studies by general education teachers who were certified in the content areas in which they provided instruction (Doc. v and review of staffing documents).
41. The progress reports from March 2015 reflect that, when placed at the XXXX that month, the student was provided with special education instruction in math and science by general education teachers who were not certified in the content areas in which they provided instruction (Doc. v and review of staffing documents).
42. The student's progress reports from May 2015 reflect that, when placed at the XXX, the student was provided with special education in English by a special education teacher who did not yet have certification in English, but who obtained certification on August 1, 2015 (Doc. v and review of staffing documents).
43. The student's progress reports from May 2015 reflect that, when placed at the XXX, the student was provided with special education instruction in math by a general education teacher who did not have certification in the content area in which instruction was provided (Doc. v and review of staffing documents).
44. The student's progress reports from May 2015 reflect that, when placed at the XXX, the student was provided with special education instruction in science by a general education teacher who did not yet have certification in science, but obtained certification on August 1, 2015 (Doc. v and review of staffing documents).

45. The student's progress reports from May 2015 reflect that, when placed at the XXXX, the student was provided with special education instruction in social studies by a general education teacher who held certification in that area of instruction (Doc. v and review of staffing documents).
46. 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" (Docs. y and gg).
47. There is no documentation that certified teachers have met with teachers who do not hold certification in order to conduct this co-planning until February, 2015 (Doc. y and review of staffing documents).
48. Ongoing recruitment efforts have been made and interviews have been conducted since July 10, 2014 in order to hire additional JSE teaching staff at the DJS facilities throughout the State (Review of staffing documents).
49. There is no documentation that the special education teachers at the XXX and the XXX, who did not hold certification in the areas in which they were the sole provider of special education instruction to the student, were involved in co-planning of instruction with teachers who held certification in those areas (Review of staffing documents).

**PRELIMINARY DISCUSSION:**

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 complainant alleges that the student did not have access to core courses due to the unavailability of those courses. The complainant also alleges that the student was not provided with the opportunity to complete credit requirements that he began earning in one facility when he was moved to another facility due to the lack of access to instruction in the same courses in each facility. The complainant asserts that this is because 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 due to the lack of text books in each area of instruction and the fact that teachers are required to obtain their own instructional materials independently (Doc. cc).

Based on the Finding of Fact #18, the MSDE finds that, while the JSE does not regularly provide instruction in all of the core courses, there is evidence that instruction has been provided when a student required a specific course. Therefore, this office does not find that a violation occurred with respect to this aspect of the allegation.

Based on the Findings of Facts #20 - #32, the MSDE finds that the student was not provided with the opportunity to continue to complete credit requirements in all of the courses he was taking when he was transferred among the DJS facilities. Based on the Finding of Fact #32, the MSDE also finds that the student was not provided with instruction in the science course in which he was enrolled when he was placed at the XXXXX. Therefore, this office finds that violations occurred.

### **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

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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 the student was not provided with the opportunity to earn service learning hours (Doc. cc). Based on the Findings of Facts #33 - #35, the MSDE finds that the documentation does not support the allegation and does not find that a violation occurred.

**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](http://www.prattlibrary.org)).

In this case, the complainant alleges that the student was not provided with access to instruction to prepare for the GED test (Doc. cc). Based on the Finding of Fact #36, the MSDE finds that the documentation does not support the allegation and does not find that a violation occurred.

**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

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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. It also states that, in the event that a related service provider is not available, an alternative related service provider will be identified to provide the related service.

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. cc).

Based on the Findings of Facts #37 - #48, the MSDE finds that the JSE has not ensured that all of the teachers at XXXX, the XXX, and the XXX have been certified in the areas in which they provided the student with instruction. Based on those Findings of Facts, the MSDE finds that the JSE did ensure that the student's general education teachers who did not hold certification were engaged in co-planning with teachers holding certification in those areas, in accordance with its procedures.

In addition, based on the Finding of Fact #49, the MSDE finds that the JSE does not currently ensure that the special education teachers who do not hold certification in the areas of instruction provided are involved in co-planning with teachers who hold certification in those areas, in accordance with its procedures.

Notwithstanding the violations identified, because the teacher qualification requirements do not create a right of action on behalf of an individual student or class of students, no student-specific corrective action is required to remediate them. In addition, because corrective action has been required at the XXXX with respect to co-planning between the special education teacher and teachers who hold certification in areas of instruction that is provided, through State complaint #15-071, no additional corrective action is required at the XXXX with respect to this violation.

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

#### **Student-Specific**

The MSDE requires the JSE to provide documentation by February 1, 2016 that the IEP team has reviewed and revised the student's IEP, consistent with the data.

The MSDE also requires the JSE to provide documentation by March 1, 2016 that an IEP team has convened and determined the services to be provided to the student to remediate the

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violations related to the lack of access to instruction in core courses, lack of provision of special education instruction by a special education teacher, loss of counseling services, and the decisions regarding the education program and placement that were inconsistent with the data.

### **School-Based**

The MSDE requires the JSE to provide documentation by April 1, 2016 of the steps taken to ensure that students placed at XXXX and the XXXXX are provided with special education instruction by the type of provider required by the IEP, that students are provided with the amount of counseling services required by the IEP, and that they are provided with the opportunity to complete credit for core courses they have been taking. 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.

The MSDE also requires the JSE to provide documentation by April 1, 2016 of the steps taken at the XXXXX to ensure that the decisions made by the IEP teams are consistent with the data, that students are being provided with instruction in the courses in which they are enrolled, and that special education teachers who do not hold certification in areas of instruction provided are involved in co-planning with teachers who hold certification in those areas.

The documentation provided must include a description of how the JSE will evaluate the effectiveness of the steps taken and monitor to ensure that the violation does 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

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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 student, including issues subject to this State complaint investigation, consistent with the IDEA. The MSDE recommends that this Letter of Findings be included with any request for mediation or due process.

Sincerely,

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

MEF/am

c:     XXXXXXXX  
       Jack R. Smith  
       XXXXXXXX  
       Karen Salmon  
       Crystal Fleming-Brice  
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