



Bernard J. Sadusky, Ed.D.
Interim State Superintendent of Schools

200 West Baltimore Street • Baltimore, MD 21201 • 410-767-0100 • 410-333-6442 TTY/TDD • MarylandPublicSchools.org

June 5, 2012

Stephen A. Bergman, Esq.
Assistant Public Defender
Office of the Public Defender
Juvenile Protection Division
201 East Baltimore Street, 8th Floor
Baltimore, Maryland 21202

Mr. Wallis Q. Norman
Executive Director, Residential Services
Maryland Department of Juvenile Services
One Center Plaza
120 West Fayette Street, Room 508
Baltimore, Maryland 21201

RE: Students with Disabilities at the
XXXXXXXXXXXXXXXXXX
Reference: #12-079

Dear Parties:

The Maryland State Department of Education, Division of Special Education/Early Intervention Services (MSDE), 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.

ALLEGATION:

On April 12, 2012, the MSDE received a complaint from Stephen A. Bergman, Esq., Office of the Public Defender, hereafter “the complainant,” on behalf of students with disabilities placed at the XXXXXXXXXXXXXXXX (XXXXXXXXXXXX) who are represented by the Office of the Public Defender. In that correspondence, the complainant alleged that the Maryland Department of Juvenile Services (DJS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to the above-referenced students. The MSDE investigated the allegation that the DJS has not ensured that a Free Appropriate Public Education (FAPE) is provided to students with disabilities placed at XXXXXXXXXXXX, in accordance with 34 CFR §300.101.

INVESTIGATIVE PROCEDURES:

1. Ms. Christine Hartman, Education Program Specialist, MSDE, was assigned to investigate the complaint.

2. On April 13, 2012, the MSDE sent a copy of the complaint, via facsimile, to Ms. Arleen Rogan, Executive Director, Professional Services, DJS, and Ms. Pamela Hardy-Cyran, Special Education Field Coordinator, DJS.
3. On April 19, 2012, Ms. Hartman spoke with the complainant by telephone to clarify the allegation to be investigated.
4. On April 20, 2012, the MSDE sent correspondence to the complainant that acknowledged receipt of the complaint and identified the allegation subject to this investigation. On the same date, the MSDE notified the DJS personnel of the allegation and requested that the DJS review the alleged violation.
5. On May 1, 2012, the MSDE requested, via electronic mail (email), that the DJS provide this office with documents relevant to the investigation of the complaint. On the same date, the MSDE received the DJS' written response to the complaint, via email.
6. On May 2, 2012, Ms. Hartman and Ms. Anita Mandis, Section Chief, Complaint Investigation Section, Complaint Investigation and Due Process Branch, MSDE, conducted an interview with Ms. Hardy-Cyran at the MSDE regarding the allegation raised in the complaint.
7. On May 8, 2012, the DJS provided the MSDE with documents to be considered during the investigation, via email.
8. On May 15, 2012, Ms. Hartman, Ms. Mandis, and Mrs. Martha J. Arthur, Education Program Specialist, MSDE, conducted a site visit at XXXXXX to review student educational records. The MSDE interviewed the following DJS personnel:
 - a. Ms. Teresa G. Judy, Special Education Coordinator for the DJS Youth Centers;
 - b. Ms. XXXXXXXXXXXXXXXXXXXX, Special Education Teacher, XXXXXXXXXXXX;
 - c. Mr. XXXXXXXXXXX, General Education Teacher, XXXXXXXXXXX;
 - d. Mr. XXXXXXXXXXX General Education Teacher, XXXXXXXXXXX; and
 - e. Mr. XXXXXXXXXXX, Instructional Assistant, XXXXXXXX.

Ms. Hardy-Cyran attended the site visit to provide information on the DJS policies and procedures, as needed.

9. On May 18, 22, and 23, 2012, Ms. Hartman corresponded, via email, with Ms. Jean E. Satterfield, Assistant State Superintendent, Division of Certification and Accreditation, MSDE, regarding information relevant to the allegation in the complaint.
10. On May 22, 2012, Ms. Mandis conducted an interview with Ms. Zondra Johnson, Special Education Coordinator, Juvenile Services Education Program, MSDE (MSDE/JSEP) at the MSDE regarding the anticipated transfer of responsibility for the educational program at XXXXXXXX to the MSDE/JSEP.

11. On May 23, 2012, the DJS staff provided additional information concerning the allegation contained in the complaint, via email.
12. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
 - a. XXXXXXXX Daily Activity Schedule;
 - b. Email correspondence between the MSDE DSE/EIS staff and the MSDE/JSEP staff, dated between May 18, 2012 and May 23, 2012;
 - c. Email correspondence from the DJS staff to the MSDE staff, dated May 23, 2012; and
 - d. State complaint submitted by the complainant and received by the MSDE on April 12, 2012.

BACKGROUND:

XXXXXXXXXXXXXXXXXXXX (XXXXXXXXXXXX) is a staff-secure residential facility for up to thirty-six (36) male youth between the ages of fourteen (14) and eighteen (18) operated by the DJS in XXXXXXXX County. Students placed by the DJS at XXXXXXXX are provided with educational instruction, including vocational training and counseling, as well as work experience each day, in order to prepare them to return to the community (Interviews with the DJS staff and <http://www.djs.state.md.us>).

According to information obtained from the DJS's website, the youth residing at XXXXXXXXX are committed to the custody of the DJS. The length of stay is dependent on the amount of time each student requires to complete his individual program in order to demonstrate the responsibility needed to be successful in the community. The program utilized has been developed to promote self-worth, personal responsibility, and a positive value system. Based on information provided by the DJS staff, in addition to its educational and vocational programs, XXXXXXXXX provides mental health and substance abuse treatment services to students who require those services (Interview with the DJS staff and <http://www.djs.state.md.us>).

During the time period covered by this investigation, the DJS was responsible for providing educational services to students placed at XXXXXXXXX. It is anticipated that the MSDE Juvenile Services Education Program (MSDE/JSEP) will assume responsibility for these services within the next year (Interview with the MSDE/JSEP staff and Md. Code Ann., Educ., §22-303 (2010)).

FINDINGS OF FACTS:

IEP Development:

Transfer of Student Educational Records

1. Based on a review of the April 2012 *Monthly Child Find Tracking Report*, maintained by the IEP Coordinator, students were enrolled in XXXXXXXXX educational program within two (2)

school days of the date each student was admitted to XXXXXXXXXXXX (Review of *Monthly Child Find Tracking Report* for April 2012).

2. There is documentation that, on the day that each student was enrolled in the educational program, a request for the educational record was made to the last school program each student attended (Review of *Monthly Child Find Tracking Report* for April 2012).
3. There is also documentation that, of the five (5) students placed at XXXXXXXXXXXX in April 2012, three (3) arrived at the facility with their educational records. The educational records of the other two (2) students were received the day of the request or the following day (Review of *Monthly Child Find Tracking Report* for April 2012).

Review and Revision of the IEP

4. A review of a tracking schedule maintained by the IEP Coordinator indicates that, within ten (10) days of the arrival of a student with a disability, the IEP Coordinator begins scheduling an "Intake" IEP Team meeting to review and revise, as appropriate, the student's IEP to ensure that it is appropriate to address the student's needs (Interviews with the DJS staff and review of IEP Coordinator's tracking schedule).
5. For each student with a disability, the IEP Coordinator maintains a file that contains a copy of the student's current IEP. A copy of the student's previous IEP is also maintained in the file if it cannot be accessed electronically (Interviews with the DJS staff and review of students' educational records).
6. The student IEPs reviewed by the MSDE staff, indicate that, for each student, the IEP team considered input from the student's parent and data about the student's present levels of performance, including information obtained through classroom-based assessments, to determine whether the student's IEP remained appropriate or required revision. If the IEP required revision, the team documented that these revisions were made based on the IEP team's determination of the student's needs (Interviews with the DJS staff and review of students' educational records).
7. A review of student IEPs also reflects that, for each student, the IEP team determined the least restrictive environment in which the student's IEP can be implemented with the provision of supplementary aids and services. The IEP team documented the basis for the decision regarding each student's educational placement. The IEPs reviewed indicated that the IEP team determined that the IEP can be implemented in a general education classroom with the provision of supplementary aids and services (Review of students' educational records).
8. Based on a review of student IEPs and the IEP Coordinator's *Special Education End of Month Report* for April 2012, students with disabilities have IEPs that require varying types and amounts of special education services. Some students with disabilities have IEPs that require direct special education instruction, and others have IEPs that require consultative services from a special education teacher. In addition, the IEPs require different types and amounts of related

services (Review of student educational records and the *Special Education End of Month Report* for April 2012).

9. The April 2012 *Special Education End of Month Report* documents that the IEP Coordinator tracks deadlines for the annual review of each student's IEP (Review of the *Special Education End of Month Report* for April 2012).

IEP Implementation:

Description of XXXX XXXX's Educational Program

10. A review of XXXXXXXXX schedule of daily activities indicates that academic classes are held each Monday through Friday from 8:00 a.m. to 11:15 p.m. and from 12:00 p.m. to 3:15 p.m. Classroom instruction is scheduled so that half of the students enrolled in the educational program receive academic instruction during the morning period and the other half receive academic instruction in the afternoon. All classroom instruction is provided in one (1) room with twelve (12) to eighteen (18) students per class, with students with disabilities receiving instruction with nondisabled peers. The classroom is staffed by two (2) regular education teachers, a special education teacher, and an instructional assistant. Two (2) resident advisors are also present in the classroom in order to provide support to the school staff (Doc. a, interviews with the DJS staff, and classroom observation).
11. A review of XXXXXXXXXXXXX schedule of daily activities indicates that, in addition to academic instruction, the students receive vocational training and counseling, as well as work experience, on a daily basis (Doc. a and interviews with the DJS staff).
12. During the site visit, the MSDE staff observed that each student had a "Personal Education Plan," a folder containing information documenting required special education services, levels of academic performance obtained from classroom-based assessments, the student's class schedule, work to be completed by the student, and scores received by the student for completed assignments. Through a review of student "Personal Education Plans" and conducting on-site classroom observations, it is noted that students are required to complete work in all academic subjects, but that they are given flexibility to determine when they work on each subject. The teachers work individually with students, assessing and tracking the completion of work assignments to ensure that work is completed in all required subject areas (Review of student *Personal Education Plans*, classroom observation, and interviews with both the DJS staff and students at XXXXXXXXXXXX).

Provision of Special Education Instruction and Related Services

13. The April 2012 *Monthly Child Find Tracking Report* indicates that the IEP Coordinator provided teachers with a copy of each new student's IEP within three (3) days of the student's enrollment in XXXXXXXXX educational program. Educational records for students with disabilities contained documentation of teacher receipt of the IEP (Review of students' educational records and the *Monthly Child Find Tracking Report* for April 2012).

14. Student files also contained reports of progress toward achievement of the annual IEP goals documenting that the goals are being addressed (Review of students' educational records).
15. The special education teacher holds a certificate in special education and the general education teachers hold certificates in social studies and science, respectively. However, none of the teachers hold certificates in English or math (Docs. b and c).
16. As part of its transition plan for assuming responsibility for the provision of educational instruction at XXXXXXXXX, the MSDE/JSEP is requiring teaching staff to re-apply for their positions in order to ensure that XXXXXXXXXXXX has appropriate staffing (Interview with the MSDE/JSEP staff).

DISCUSSION/CONCLUSIONS:

A public agency must make a FAPE available to all students with disabilities under the IDEA (34 CFR §300.101). The term "public agency" is defined as a State or local government responsible for the provision of a FAPE to students with disabilities under the IDEA (34 CFR §300.33). In Maryland, public agencies include, among others, the DJS (COMAR 13A.05.01.03).

IEP Development:

When a student is placed in State supervised care, the receiving school must, within two (2) school days of receiving notice of enrollment, request the educational record of the student from the sending school. Within three (3) days of receiving such notice, the sending school must, among other things, send a copy of the student's education record to the receiving school (Md. Code Ann., Educ. §8-504 and COMAR 13A.08.07.03).

If the student is a student with a disability, the receiving public agency must then either implement the student's IEP, or develop, adopt and implement a new IEP (34 CFR §300.323). When developing an 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 (34 CFR §300.324).

When developing an IEP, the public agency must also determine the placement in which the IEP will be implemented. The IDEA requires that the public agency ensures that, to the maximum extent appropriate, students with disabilities, including students in State care, are educated with students who are not disabled. The IDEA requires that special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs 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 (34 CFR §§300.114 - .116).

In this case, the complainant alleges that XXXXXXXXX does not have a system in place to ensure a FAPE to students with disabilities enrolled in its school. Specifically, the complainant alleges that IEPs

are revised based upon the service delivery system which is available at the facility and is not based upon each student's needs (Doc. d).

Based on the Findings of Facts #1 - #14, the MSDE finds that XXXXXXXXXXXX is implementing procedures to ensure the provision of a FAPE to students with disabilities enrolled in its facility. These procedures include the timely request for student records and review and revision of IEPs based on each student's individual needs. Therefore, the MSDE does not find a violation with respect to this aspect of the allegation.

IEP Implementation:

The public agency is required to ensure that each student is provided with the special education and related services required by the IEP. The IDEA requires that special education instruction be provided by highly qualified personnel, consistent with Section 1119(a)(2) of the Elementary and Secondary Education Act of 1965. However, the highly qualified staff requirement does not create an individual right on the part of a student to receive instruction from highly qualified staff (34 CFR §§300.18, .101, .156 and .323).

In this case, the complainant also specifically alleges that the students at XXXXXXXXXXXX are not provided with special education instruction and that there are no separate special education classrooms available for students whose IEPs cannot be implemented in the general education setting. Based on the Findings of Facts #7 and #10 - #14, the MSDE finds that XXXXXXXXXXXX provides special education instruction in accordance with student IEPs in the educational placement required by the IEP.

Notwithstanding, based on the Finding of Fact #15, the MSDE finds that special education instruction in the areas of English and math is not provided by highly qualified teachers. Therefore, the MSDE finds that a violation has occurred with respect to this aspect of the allegation. However, students do not have an individual right to instruction from highly qualified staff. Therefore, no student-based corrective action is required.

Further, based on the Finding of Fact #16, this office finds that the MSDE/JSEP staff has determined the steps to be taken during the transition of responsibility for the educational program from the DJS to the MSDE/JSEP to ensure appropriate staffing at XXXXXXXXXXXX. Therefore, no school-based corrective action is required by the DJS. By copy of this Letter of Findings, we are sharing our findings with the MSDE/JSEP staff for their consideration during the transition process.

Please be advised that the complainant and the DJS 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

Stephen A. Bergman, Esq.
Mr. Wallis Q. Norman
June 5, 2012
Page 8

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.

Questions regarding the findings and conclusions contained in this letter should be addressed to this office in writing. The parents of students with disabilities who have been placed at XXXXXXXXXX and the DJS 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 a student placed at that facility, 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/ch

cc: Linda McWilliams
Arleen Rogan
XXXXXX
Pamela Hardy-Cyran
Mark Mechlinski
Zondra Johnson
Dori Wilson
Anita Mandis
Christine Hartman