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November 15, 2011

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Office of the Public Defender, Juvenile Protection Division
201 East Baltimore Street, Suite 1220
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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
XXXXXXXXXXXXXX
Reference: #12-015

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

ALLEGATION:

On September 20, 2011, the MSDE received a complaint from Abbie Flannagan, Esq., hereafter, “the complainant,” on behalf of students with disabilities at the XXXXXXXXXXXXXXXX (XXXXXXXXXX). 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 the XXXXXXXXXXXX, in accordance with 34 CFR §300.101.

INVESTIGATIVE PROCEDURES:

1. Ms. Kathy Stump, Education Program Specialist, MSDE, was assigned to investigate the complaint.

2. On September 22, 2011, the MSDE sent a copy of the complaint, via facsimile, to Mr. Steven Moyer, Deputy Secretary for Administration, DJS; Ms. Arleen Rogan, Executive Director, Professional Services, DJS; and Ms. Pamela Hardy-Cyran, Special Education Field Coordinator, DJS.
3. On September 23, 2011, Ms. Stump spoke with the complainant by telephone to clarify the allegation to be investigated.
4. On September 26, 2011, 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 September 29, 2011, Ms. Stump spoke with Mr. Wallis Q. Norman, Executive Director, Residential Services, DJS, by telephone regarding the allegation in the complaint. On that same date, the MSDE sent Mr. Norman a copy of the complaint and the correspondence from the MSDE to the complainant, dated September 26, 2011, via electronic mail (e-mail).
6. On October 3, 2011, Ms. Stump spoke with Ms. Hardy-Cyran by telephone regarding the allegation in the complaint. On that same date, the MSDE sent Ms. Hardy-Cyran a copy of the complaint and the correspondence from the MSDE to the complainant, dated September 26, 2011, via e-mail.
7. On October 7, 2011, the MSDE sent a request for documentation related to the allegation to Mr. Norman and Ms. Hardy-Cyran, via e-mail.
8. On October 17, 2011, Ms. Stump, Mrs. Martha J. Arthur, Education Program Specialist, MSDE, and Ms. Janet Jacobs, Education Program Specialist, MSDE, conducted a site visit at the XXXXXXXXXX to review policies and procedures and to review educational records. The MSDE spoke with the following personnel:
 - a. Mr. Ty Blackwell, Educational Quality Review Specialist, Quality Improvement Unit, DJS;
 - b. Ms. Hardy-Cyran; and
 - c. Ms. XXXXXXXX, Teacher Supervisor, XXXXXXXX.
9. On October 24, 2011, the MSDE requested additional documentation from the XXXX XXXX, which was provided on October 27, 2011 and November 1 and 2, 2011, via e-mail.

10. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
 - a. Correspondence and attachments from the complainant to MSDE, received on September 20, 2011;
 - b. DJS Policy and Procedure *Behavior Management Program for DJS Detention Facilities*, dated January 3, 2008;
 - c. DJS Policy and Procedure *Seclusion Policy*, dated February 22, 2008;
 - d. DJS *Gap Analysis Addendum 2009*, dated March 9, 2009;
 - e. DJS, Office of Quality Improvement *Comprehensive Quality Review Report* for the XXXXXXXX, dated March 4, 2011;
 - f. DJS *Schools Child Find Standard Operating Procedure* document, undated;
 - g. DJS Educational Services Unit, Office of Pupil Services, *Record Retrieval Process and Timeline* document, undated;
 - h. DJS *Standard Operating Procedures Regarding Special Education Service Delivery to Students New to DJS Schools* document, undated;
 - i. DJS *Standard Operating Procedures Regarding the Provision of IEP Related Services* document, undated;
 - j. DJS *Related Services Referral Form*, undated;
 - k. DJS *Related Services Documentation Log*, undated;
 - l. DJS *Standard Operating Procedures for Education in Detention* “Staffing and Instruction” document, undated;
 - m. DJS *Providing Special Education Services in an Alternate Setting* form, undated;
 - n. XXXXXXXX *Student Admission Interview* form, undated;
 - o. XXXXXXXX *Record Request* form, undated;
 - p. XXXXXXXX Education Department Daily Schedule for 2011;
 - q. XXXXXXXX *Corrective Action Plan*, undated; and
 - r. XXXXXXXXXXXX *Behavior Management Program*, dated July 19, 2011.

BACKGROUND:

The XXXXXX is a DJS facility that houses girls in both detention and secure treatment programs. These youth may be detained in a detention facility for up to thirty (30) days while awaiting an adjudication hearing, and may also be committed to a secure treatment facility following adjudication and Court Order for secure placement.

During the time period covered by this investigation, the DJS was responsible for providing educational services to students in both detention and treatment facilities. However, the DJS transferred the youth in the secure treatment facility to the XXXXXXXXXXXXXXXXXXXXXXXX on November 1, 2011. As a result of that transfer, the MSDE, Division of Career and College Readiness, Juvenile Services Education Program, has assumed responsibility for providing educational services to those students (Docs. a, d, and interview with the MSDE personnel).

PRELIMINARY DISCUSSION: PUBLIC AGENCY AND COMPULSORY SCHOOL ATTENDANCE

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 the DJS (COMAR 13A.05.01.03). Therefore, the DJS is the public agency with the responsibility to ensure a FAPE to students with disabilities who reside at the XXXXXXXX.

Under Maryland law, when a Court commits a child to the DJS, it transfers custody of the child to that agency. Custody is defined as both a right and an obligation to provide ordinary care for a child and to determine a residential placement for the child (Maryland Code, Ann., Cts. & Jud. Proc., §3-8A-01, [2011]). A purpose of commitment to the DJS is to secure for the child custody, care, and discipline as nearly as possible equivalent to that which the child’s parents should have given (Maryland Code, Ann., Cts. & Jud. Proc., §3-8A-02 [2011]). Therefore, when a child is committed to the custody of the DJS, that agency has the responsibility to ensure that the child is enrolled in and attends school if that child is of compulsory school attendance age, just as the child’s parents would be responsible for doing if the child remained in the parents’ custody.

State law requires that students between ages five (5) and sixteen (16) attend school. However, a student may be excused from attending school for a lawful reason. As a result, when a student misses school for an extended period of time, a public agency must investigate a student’s continued absence to determine whether the absence is lawful (Maryland Code, Ann., Educ. §§7-301 - 7-302 (2006)).

PROVISION OF FAPE: INDIVIDUALIZED EDUCATION PROGRAM (IEP) IMPLEMENTATION

Findings of Facts:

1. The DJS has policies and procedures in place that address the provision of special education instruction and related services to students with disabilities in educational settings located on the grounds of the DJS facilities (Docs. f-q and interview with the DJS personnel).
2. As a result of a comprehensive quality review conducted by the DJS in February 2010, the DJS has determined that XXXXXXXX students are not provided with special education instruction and related services when there is inadequate staffing to escort the students from the residence to the education building (Doc. e).
3. The DJS personnel are developing a plan to correct the areas of noncompliance identified through the quality review (Docs. e and q).

Discussion/Conclusions:

A FAPE must be made available to all students with disabilities under the IDEA, including students placed in the custody of the DJS (*See* 34 CFR §300.101 and Md. Code Ann., Educ. §22-301 *et seq*). To provide a FAPE, the public agency must ensure that the student is provided with the special education and related services required by the IEP (34 CFR §300.101).

Based on the Findings of Facts #1 and #2, the MSDE finds that the XXXXXXXXX does not consistently ensure that students with disabilities are provided with a FAPE. Therefore, the MSDE finds a violation has occurred regarding this aspect of the allegation.

Based on the Finding of Fact #3, the MSDE finds that the DJS has developed a corrective action plan, as a result of an internal quality review, and is taking steps to address the areas of noncompliance. Therefore, the MSDE will require no additional systemic corrective action to redress the violation.

PROVISION OF FAPE: **HOME AND HOSPITAL TEACHING (HHT)**

Findings of Facts:

4. The DJS has a policy and procedure in place to ensure that students who cannot attend school due to a physical or emotional condition continue to receive educational services within the DJS facility, but they do not address the requirements to ensure that those services are provided in accordance with the IEP for students with disabilities (Doc. m).
5. The policies and procedures related to the provision of educational services to students who cannot attend school due to a physical or emotional condition within the DJS facility do *not* address the provision of special education services to students with disabilities who are hospitalized outside of a DJS facility (Doc. m and interview with the DJS personnel).

Discussion/Conclusions:

As stated above, a FAPE must be made available to all students with disabilities under the IDEA, including students placed in the custody of the DJS (*See* 34 CFR §300.101 and Md. Code Ann., Educ. §22-301 *et seq*). To provide a FAPE, the public agency must ensure that the student is provided with the special education and related services required by the IEP (34 CFR §300.101). When a student cannot attend school due to a medical or emotional condition, the public agency responsible for ensuring a FAPE for the student must determine whether that student requires HHT services. In order to provide HHT services, the public agency must have verification from a physician, psychiatrist, or psychologist of the medical or emotional condition preventing the student from attending school. Once it has been verified that a student requires HHT services, those services must be initiated within ten (10) school days of the date of the verification of need (COMAR 13A.03.05.03D, 13A.03.05.04, and 13A.05.01.10).

The IEP team must review and revise the student's IEP and determine the instructional services to be provided to the student as long as the medical restrictions apply and develop a plan for returning the student to a school-based program. When the period of treatment or convalescence ends, the IEP team must review and revise the IEP and determine the appropriate placement in the least restrictive environment (COMAR 13A.05.01.10(C)(5)).

Based on the Findings of Facts #4 and #5, the MSDE finds that the DJS has not ensured that students with disabilities who cannot attend school due to a physical or emotional condition are provided with special education services in accordance with the COMAR requirements for HHT services. Therefore, the MSDE finds a violation regarding this aspect of the allegation.

PROVISION OF FAPE: **DISCIPLINARY REMOVALS**

Findings of Facts:

6. The DJS has a policy that states that a student *may* be removed from the classroom to the residence for inappropriate behavior that occurs in school. However, the DJS personnel report that these removals are not considered disciplinary removals from school (Docs. b, c, r, and interview with the DJS personnel).

7. There are no policies or procedures in place to ensure that the discipline protections of the IDEA and the COMAR are provided to students with disabilities if the students are disciplinarily removed from school (Docs. b, c, r, and interview with DJS personnel).

Discussion/Conclusions:

As stated above, a FAPE must be made available to all students with disabilities under the IDEA, including students placed in the custody of the DJS (*See* 34 CFR §300.101 and Md. Code Ann., Educ. §22-301 *et seq*). To provide a FAPE, the public agency must ensure that the student is provided with the special education and related services required by the IEP (34 CFR §300.101). The IDEA and the COMAR provide protections to students with disabilities who are removed from school in excess of ten (10) school days in a school year. These protections include the provision of educational services by the eleventh (11th) day of removal. These services must be determined by the IEP team and must be designed to enable the student to progress in the general curriculum and advance toward achieving the IEP goals, although those services may be provided in an alternative setting (34 CFR §300.530 and COMAR 13A.08.03.08).

Based on the Findings of Facts #6 and #7, the MSDE finds that the DJS does not have policies and procedures in place to provide students with disabilities the protections of the IDEA and the COMAR if they are disciplinarily removed from school. Therefore, the MSDE finds a violation regarding this aspect of the allegation.

CORRECTIVE ACTIONS/TIMELINES:

Student-specific

The MSDE requires the DJS to provide documentation by February 15, 2012, that the XXXXXXXXX has identified students with disabilities under the IDEA who resided in the facility between September 2010¹ and October 2011 and determine what special education and related services, if any, those students may have missed as a result of inadequate staffing to transport the students to the education building. XXXXXXXXXXXX must contact the parents of each student identified as having missed special education and related services and inform them of their right to request an IEP team meeting for the purpose of determining the amount and nature of *compensatory services*² or other remedy needed to remediate the loss of services. XXXXXX XXXX shall ensure that within twenty (20) days of receiving information that a student's parent wishes to convene an IEP team meeting, a meeting is convened for this purpose.

The DJS must provide the parent with proper written notice of the determinations made at the IEP team meeting including a written explanation of the basis for the determinations, as required by 34 CFR §300.503. If the student's parent disagrees with the IEP team's determinations, the parent maintains the right to request mediation or file a due process complaint, in accordance with the IDEA.

Systemic

The MSDE requires the DJS to provide documentation by February 15, 2012, that steps have been taken to ensure compliance with the IDEA and the COMAR requirements for the violations identified in this investigation and to ensure that the violations do not recur. Upon receipt of this report, the MSDE will verify the data to ensure continued compliance with the regulatory requirements, consistent with the requirements of the United States Department of Education, Office of Special Education Programs. Additionally, the findings in the Letter of Findings will be shared with the MSDE's Office of Quality Assurance and Monitoring for Continuous Improvement for its consideration during present or future monitoring of the XXXXXXXXX.

Documentation of all corrective action taken is to be submitted to this office to Attention: Chief, Complaint Investigation/Due Process Branch, Division of Special Education/Early Intervention Services, MSDE.

¹ This office has authority to investigate allegations of violations that occurred not more than one (1) year from the date the complaint is received, in accordance with 34 CFR §300.153. Therefore, the corrective action may only apply to that time period.

² For the purpose of this letter, these are services, as determined by the IEP team, needed to remediate the denial of appropriate services to the student (34 CFR §300.151).

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TECHNICAL ASSISTANCE:

Technical assistance is available to the parties through Mrs. Martha J. Arthur, Education Program Specialist, MSDE. Mrs. Arthur may be contacted at (410) 767-0255.

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 fact 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, conclusions and corrective actions contained in this letter should be addressed to this office in writing. The parents of students with disabilities who have been placed at the XXXXXXXXXX between September 2010 and October 2011 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 the student, including issues subject to a 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:ks

cc :	Sam Abed	XXXXXXXXXX
	Arleen Rogan	Marcella Franczkowski
	Katharine Oliver	Beverly Schulerbrandt
	Mark Mechlinski	Pam Hardy-Cyran
	William Fields	XXXXXXXXXX
	Dori Wilson	XXXXXXXXXX
	Martha Arthur	
	Kathy Stump	