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State Superintendent of Schools

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January 25, 2013

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Ms. Gwendolyn J. Mason, Director  
Department of Special Education Services  
Montgomery County Public Schools  
850 Hungerford Drive, Room 225  
Rockville, Maryland 20850

RE: XXXXX  
Reference: #13-019

Dear Parties:

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

During the course of the investigation, this office received information from Jennifer Barmon, Esq., hereafter, “the complainant,” that the student was transferred to another jurisdiction. Because the complainant alleged an ongoing violation with the provision of a Free Appropriate Public Education (FAPE) in the new jurisdiction, the MSDE identified an additional allegation of a violation of the Individuals with Disabilities Education Act (IDEA) for investigation in this State complaint.

While there is a sixty (60) day timeline for completion of the complaint investigation, this may be extended due to exceptional circumstances related to a particular complaint. As a result of the additional allegation raised, the MSDE informed the parties, on January 2, 2013, that the timeline for completing the investigation would be extended in order for this office to obtain the information necessary to investigate the additional allegation, pursuant to 34 CFR §300.152.

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**ALLEGATIONS:**

On November 4, 2012, the MSDE received a complaint from the complainant on behalf of the student. In that correspondence, the complainant alleged that the Montgomery County Public Schools (MCPS) violated certain provisions of the IDEA with respect to the student. Subsequently, the complainant alleged that the Department of Juvenile Services (DJS) also violated certain provisions of the IDEA with respect to the student.

The MSDE investigated the allegations listed below.

1. The MCPS did not ensure that the student was provided with a FAPE from October 11, 2012 to November 4, 2012,<sup>1</sup> in accordance with 34 CFR §§300.101, .111, and .323, and COMAR 13A.05.09.01-.07; and
2. The DJS has not ensured that the student has been provided with a FAPE since November 7, 2012, in accordance with 34 CFR §§300.101, .111, and .323.

**INVESTIGATIVE PROCEDURES:**

1. Ms. Christine Hartman, Education Program Specialist, MSDE, was assigned to investigate the complaint.
2. On November 8, 2012, the MSDE sent a copy of the complaint, via facsimile, to Ms. Gwendolyn Mason, Director, Department of Special Education Services, MCPS, and Ms. Julie Hall, Director, Division of Business, Fiscal, and Information Systems, MCPS.
3. On November 8, 2012, Ms. Anita Mandis, Section Chief, Family Support and Dispute Resolution Branch, MSDE, conducted a telephone interview to clarify the allegation to be investigated.
4. On November 15, 2012, Ms. Koliwe Moyo, Education Program Specialist, MSDE, who is the complaint investigator in a related case involving a different student, conducted a telephone interview with Ms. XXXXXXXXXXXXXXXX, Administrator, Residential Services, XXXX XXXXXXXXXXXX, XXXXXXXXXXXXXXXXXXXX. XXXXXXXXXXXX XXXX is a temporary XXXXX in which the student was placed by the DJS.
5. On November 16, 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 Mrs. Chrisandra A. Richardson,

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<sup>1</sup> The dates identified for investigation were October 11, 2012 to November 7, 2012. However, during the course of the investigation, it was discovered that the time period was October 11, 2012 to November 4, 2012.

Associate Superintendent, Department of Special Education and Student Services, MCPS, of the allegation and requested that her office review the alleged violation.

6. On November 16, 2012, Ms. Mandis spoke with Ms. Sharon H. Gooding, Supervisor, Equity Assurance and Compliance Unit, MCPS, by telephone about the allegation being investigated.
7. On November 20 and 30, 2012, Ms. Hartman conducted a telephone interview with Mr. Frank Duncan, Acting Regional Director, DJS, and requested documentation concerning the allegation being investigated.
8. On November 29, 2012, Ms. Hartman conducted a telephone interview with Ms. XXX and requested documentation concerning the allegation being investigated. On that same day, Ms. XXX provided the MSDE with documentation to be considered during this investigation.
9. On November 30, 2012, and December 6 and 13, 2012, Ms. Hartman and Ms. Moyo conducted telephone interviews with the complainant about the allegation in this complaint and in related complaints.
10. On December 4 and 12, 2012, and January 14, 16, 17, 18, and 22, 2013, Ms. Hartman corresponded with Ms. Zondra Johnson, Special Education Coordinator, MSDE, Juvenile Services Education Program (MSDE/JSEP), via electronic mail (email), and requested documentation concerning the allegation being investigated.<sup>2</sup>
11. On December 4 and 13, 2012, and January 15, 17, and 18, 2013, the MSDE/JSEP provided the MSDE with information concerning the allegation being investigated.
12. On December 4 and 13, 2012, and January 11, 14, 17, 18, and 22, 2013, Ms. Hartman corresponded with Ms. Pamela Hardy-Cyran, Lead Coordinator of Correctional Education, DJS, via email, and requested documentation concerning the allegation being investigated.
13. On December 4 and 13, 2012, and January 14, 16, 17, 18 and 22, 2013, the DJS provided the MSDE with information concerning the allegation being investigated.
14. On December 10 and 17, 2012, the complainant provided the MSDE with documents to be considered during the investigation.

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<sup>2</sup> On January 9, 2013, the MSDE/JSEP assumed responsibility for the juvenile services educational program at Noyes and is responsible for developing and implementing educational services at the residential facility (Doc. i and Md. Code Ann., Educ., §22-303 (2010)).

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15. On December 17, 2012, Ms. Moyo, Ms. Mandis, Ms. Hartman, Ms. Tyra Williams, Education Program Specialist, MSDE, and Mrs. Martha J. Arthur, Education Program Specialist, MSDE, conducted a site visit at the Montgomery County Board of Education Office, and interviewed the following MCPS staff:

- a. Mr. Steven Neff, Director, Pupil Personnel Services, MCPS;
- b. Ms. Ursula Hermann, Director, Student Services, MCPS;
- c. Mrs. Kimberly Johnson, Coordinator, Pupil Personnel Services, MCPS;
- d. Ms. Mary Dempsey, Coordinator, Appeals and Transfer Team, MCPS; and
- e. Ms. XXXXXX, Principal, XXXXXXXX.

Ms. Mason, Mrs. Richardson, and Ms. Gooding attended the site visit as representatives of the MCPS and to provide information on the MCPS policies and procedures, as needed.

16. On December 19 and 21, 2012, the MCPS provided the MSDE with documents to be considered during the investigation, via email.

17. On January 2, 2013, the MSDE sent correspondence to the complainant that explained that, during the course of the investigation, the MSDE discovered that the DJS also had responsibility for providing the student with educational services, and identified a subsequent allegation subject to this investigation. On the same date, the MSDE notified Mrs. Richardson and Mr. Wallis Norman, Executive Director of Residential Services, DJS, of the additional allegation to be investigated, and requested that the MCPS and the DJS review the alleged violations.

18. On January 4, 2013, the complainant provided the MSDE with documents to be considered for the investigation.

19. On January 14, 2013, Ms. Hartman and Ms. Williams, who is the complaint investigator in a related case involving a different student, conducted an interview with Ms. Johnson at the MSDE and requested documents from the student's educational record.

20. On January 15, 2013, the MSDE/JSEP provided the MSDE with documentation to be considered during the investigation, via email.

21. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:

- a. Correspondence from the complainant to the MSDE, alleging violations of the IDEA, received on November 5, 2012;
- b. Individualized Education Program (IEP), dated September 20, 2010;

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- c. IEP, dated December 18, 2012;
- d. Correspondence from the MCPS to the student's parent, dated January 12, 2011;
- e. Montgomery County Circuit Court Order, dated October 9, 2012;
- f. Youth XXXXX Roster, dated October 1, 2012 through November 27, 2012;
- g. Montgomery County Circuit Court Order, dated November 7, 2012;
- h. Email correspondence from the DJS to the MSDE, dated December 5, 2012;
- i. Email correspondences from the MSDE/JSEP to the MSDE, dated January 15 and 18, 2013;
- j. Email correspondence from the DJS to the MSDE, dated January 16, 2013;
- k. Written response to the complaint from the MCPS, dated December 17, 2012;
- l. Maryland Student Transfer Record for the XXXXX XXXX XXXX Children's Center, dated November 30, 2012;
- m. School Psychologist's Related Services Provider Log, for services provided between November 9, 2012 and January 8, 2013;
- n. XXXXXXXXXXXXXXXXXXXXXXXX school schedule for the 2012-2013 school year;
- o. Maryland Student Transfer Record for the XXXXX XXXX Education Office, dated January 3, 2013;
- p. School Psychologist's Related Services Provider Log, for services provided between December 7, 2012 and January 2, 2013; and
- q. The DJS Personal Education Plan for the student, with a schedule of his classes, developed on November 27, 2012 and ending January 3, 2013.

**BACKGROUND:**

The student, who is committed to the custody of the Department of Juvenile Services (DJS), is seventeen (17) years old and is identified as a student with an emotional disability under the IDEA. The student has an Individualized Education Program (IEP) that requires the provision of special education instruction and related services (Docs. b and c).

On October 9, 2012, the student was placed by a Court Order into the care and custody of the DJS. On October 11, 2012, the DJS placed the student in the XXXXXXXXXXXX, a XXXXX located in Montgomery County, hereafter "the XXXX XXX XXXXX," pending the Court's disposition of the case. The student was not enrolled in an educational program while placed by the DJS at the XXXXXXXXXXX XXXXX (Docs. e and f, interviews with the complainant and the MCPS staff, and review of the student's educational record).

On November 4, 2012, the XXXXXXXXXXX XXXXX discharged the student after he left without permission. On November 7, 2012, the student was placed by the DJS, pursuant to a Court Order, at the XXXXXXXXXXXXXXXXXXXXXXXX (XXXXXX). XXXX, which is also located in Montgomery County, is a DJS detention facility for youth waiting to go to court or to be placed in a XXXXX facility. Youth residing at XXXX attend school on the grounds of the facility,

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where the educational program was operated by the DJS.<sup>2</sup> During this time period, the student was enrolled in the educational program located at XXX (Docs. f-h and l-n, interview with the XXXXX XXXXX XXXXX staff, and <http://www.djs.state.md.us/XXX-X-XXXX.asp>).

On November 28, 2012, the DJS placed the student at the XXXXXXXXXXXXXXXXXXXX (XXXXXXXXXXXX), which is a “XXXXXX” serving male youth between the ages of fourteen (14) and eighteen (18), and which provides year-round instruction to students. During this time period, the student was enrolled in the educational program located at XXXXX XXXXXX (Docs. h and o-q, and <http://www.djs.state.md.us>).

On January 3, 2013, the student was returned to XXXX by the DJS. During this time period, the student was enrolled in the educational program located at XXX (Docs. i and m).

On January 16, 2013, the DJS placed the student at the XXXXXXXXXXXXXXXX (XXXXXXXX) which, like XXXXXXXXXXXXXXXX, is a DJS “XXXXXXX” serving male youth between the ages of fourteen (14) and eighteen (18), and which also provides year-round instruction to students. During this time period, there is no documentation that the student was enrolled in the educational program located at XXXXXX (Docs. i and j, review of the student’s educational record, and <http://www.djs.state.md.us>).

## **ALLEGATION #1: MCPS PROVISION OF A FAPE**

### **Findings of Facts:**

1. In September 2012, the XXXXXXXXXXX XXXXX staff notified the MCPS of the opening of the XXXXX, which has the capacity to serve up to fourteen (14) students for a maximum of sixty (60) days (Doc. k and interviews with the MCPS staff).
2. On October 11, 2012, the student was placed by the DJS at the XXXXXXXXXXX XXXXX (Docs. e and f).
3. The last known IEP for the student at the time of his placement at the XXXXXXXXXXX XXXXX was developed by the MCPS on September 20, 2010.<sup>3</sup> The IEP required the provision of special education instruction and related services in a nonpublic separate special education school in “a highly structured, small, therapeutic setting with individual counseling, behavior management and high staff to student ratio...to address social/emotional and academic deficits” (Doc. b).

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<sup>3</sup> Subsequent to the development of the September 20, 2010 IEP, the student moved to the State of XXXXX, but returned to Maryland prior to being placed in the custody of the DJS. There is no documentation that the student re-enrolled in school after his return to Maryland (Doc. d and review of the student’s educational record).

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4. On November 4, 2012, the XXXXXXXXXXX XXXXX discharged the student after he left without permission (Doc. f and interviews with the XXXXXXX XXXXX staff).
5. There is no documentation that, while the student was at the XXXXXXXXXXX XXXXX, the MCPS made attempts to determine the student's school of origin or ensure he was enrolled in an educational program (Interviews with the XXXXXXXXXXX XXXXX staff and the MCPS staff, and review of the student's educational record).

### **Discussion/Conclusions:**

Each public agency must have an IEP in effect for each student with a disability within its jurisdiction in order to ensure that the student is provided with a FAPE (34 CFR §§300.101 and .323). The State must ensure that all students with disabilities are identified, located, and evaluated, and must ensure that a practical method is implemented to determine which students are receiving needed services (34 CFR §300.111).

The State of Maryland requires each local school system to ensure that all students with disabilities residing within the jurisdiction of the local school system are located, identified, evaluated, and provided with special education services (COMAR 13A.05.02.13).

Further, this requirement extends to highly mobile students and homeless students located within the jurisdiction, as these students are among those who are considered to be "residing within the jurisdiction of the local school system" who must be served by the local school system (COMAR 13A.05.02.13).

The COMAR was recently revised to expand the federal definition of homeless students to those whom the DJS has placed in a temporary, short-term placement of not longer than ninety (90) school days (COMAR 13A.05.09.02). When a school is notified that a student seeking to enroll is homeless, and the student does not have appropriate enrollment documentation, the school must immediately enroll the student and the school system must provide assistance with obtaining the necessary documentation. If a homeless student enrolls without providing the educational record, the school where the student is seeking to enroll must immediately contact the former school to request that the record be transferred and provide special education and related services as soon as possible (COMAR 13A.05.09.05).

The local educational agency serving a homeless student must have a procedure for continuing the student's education in his or her school of origin for the duration of homelessness as long as doing so is in the best interest of the student and not contrary to the wishes of the student's parent or guardian. When determining the best interest of the student, various factors, such as the distance of commute and the impact on the student's education, must be considered (COMAR 13A.05.09.04).

Based on the Findings of Facts #1 – 5, the MSDE finds that this student, who is identified as a student with a disability under the IDEA, also meets the definition of a homeless student, in accordance with the COMAR. Based on those same Findings of Facts, the MSDE finds that the MCPS did not ensure that he was provided with the special education and related services required by the IEP and with the protections afforded to homeless students, from October 11, 2012 to November 4, 2012. Therefore, the MSDE finds that a violation occurred with respect to this allegation.

## **ALLEGATION #2: DJS PROVISION OF A FAPE**

### **Findings of Facts:**

6. From November 7, 2012 to November 28, 2012, the student was placed by the DJS at XXXX. While at XXXXXX, the student participated in the educational program at that facility and was provided with counseling services by the school psychologist. However, there is no documentation that the student received the special education services instruction required by the September 20, 2010 IEP, which continued to be the last known IEP. There is documentation that the counseling services provided were designed to address the annual IEP goal for the student to improve his behavior and social skills in the school setting. However, the documentation reflects that the student was not provided with these services in the amount and frequency required by the IEP (Docs. g, h, and l-n, and review of the student's educational record).
7. On November 28, 2012, the DJS placed the student at XXXXXXXXXXXXXXX. On December 18, 2012, the DJS convened an IEP team to review the student's IEP. At that time, the IEP was revised to require fifteen (15) hours per week of special education instruction in the general education environment (Docs. c, h and i).
8. While at XXXXXXXXXXXXXXX, the student participated in the educational program at that facility and was provided with counseling services by the school psychologist. However, there is no documentation that the student received the special education instruction required by the IEP. There is documentation that the counseling services provided were to improve the student's behavior and social skills in the school setting. However, the documentation reflects that the student was not provided with these services in the amount and frequency required by the IEP (Docs. b, c, h, i, and o-q, and review of the student's educational record).
9. Between January 3, 2013 and January 15, 2013, the DJS returned the student to XXXX. While at XXXX, the student participated in the educational program at that facility and was provided with counseling services by the school psychologist. However, there is no documentation that the student received the special education instruction required by the IEP. There is documentation that the counseling services provided were to improve the

student's behavior and social skills in the school setting. However, the documentation reflects that the student was not provided with these services in the amount and frequency required by the IEP (Docs. i, j and m, and review of the student's educational record).

10. On January 16, 2013, the DJS placed the student at XXXXXXXXXXXX. There is no documentation that the student is participating in an educational program since being placed at that facility (Docs. i and j, and review of the student's educational record).

### **Discussion/Conclusions:**

The term "public agency" is defined as a State or local government responsible for the provision of a FAPE to students with disabilities. In Maryland, public agencies include, among others, the DJS (34 CFR §§300.33, and COMAR 13A.05.01.03.B(59)).

A public agency is required to ensure that each student is provided with the special education and related services required by the student's IEP (34 CFR §300.101). When a student with a disability transfers from one public agency to another within the same State, the new public agency must provide the student with services that are comparable to those contained in the child's IEP from the previous public agency, until the new public agency either adopts the IEP or develops a new IEP (34 CFR §300.323 and COMAR 13A.05.01.09). "Comparable services" are 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 (Analysis of Comments and Changes to the IDEA, Federal Register, Vol. 71, No. 156, p. 46681, August 14, 2006).

Based on the Findings of Facts #6 – #10, the MSDE finds that there is no documentation that the student has been provided with the special education required by the IEP since transferring to XXXXX on November 7, 2012. Additionally, based on the same Findings of Facts, the MSDE finds that, while the student received counseling to address the social/emotional/behavioral goal of the IEP, there is no documentation that he received those services in the amount and frequency required by the IEP. Therefore, the MSDE finds that a violation occurred with regard to this aspect of the allegation.

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

#### **Student-Specific**

The MSDE requires that the DJS provide documentation by February 1, 2013 that the student is receiving the special education instruction and related services required by the IEP.

The MSDE requires the MCPS to coordinate with the DJS to convene an IEP team and provide documentation by April 1, 2013 that the IEP team has determined the amount and nature of

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*compensatory services*<sup>4</sup> or other remedy that both the MCPS and the DJS will provide in order to redress the loss of services to the student.

Specifically, the MCPS must provide the student with *compensatory services*<sup>4</sup> to remediate the loss of services from October 11, 2012 to November 4, 2012. The DJS must provide the student with *compensatory services*<sup>4</sup> to remediate the ongoing loss of services since November 7, 2012.

The DJS must provide the student's 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 parent disagrees with the IEP team's determinations, he maintains the right to request mediation or file a due process complaint, in accordance with the IDEA.

### **Systemic**

#### MCPS

Pursuant to a Letter of Findings issued as a result of a State Complaint investigation conducted regarding another student placed by the DJS at the XXXXXXXXXXX XXXXX in Montgomery County (Complaint #13-018), the MSDE has required the MCPS to ensure that all students placed by the DJS at the XXXXXXXXXXX XXXXX are provided with a FAPE. Therefore, no additional corrective action is required.

#### DJS

The MSDE requires the DJS to provide documentation by April 1, 2013 of the steps it has taken to ensure that students at XXXXXXXXXXX and XXXXXX are provided with the special education instruction and related services required by the IEP.

Documentation of all corrective actions taken is to be submitted to this office to the attention of the Chief of the Family Support and Dispute Resolution Branch, Division of Special Education/Early Intervention Services, MSDE.

### **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.

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<sup>4</sup> Compensatory services, for the purposes of this letter, mean the determination by the IEP team as to how to remediate the denial of appropriate services to the student (34 CFR §300.151).

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Please be advised that all parties 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 public agencies 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 student's parent and the public agencies 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/ch

cc:	XXXXXXXX, c/o Jennifer Barmon	Zondra Johnson
	Joshua P. Starr	William Fields
	Julie Hall	Maria Lamb
	Sharon Gooding	John T. McGinnis
	XXXXXXXX	Dori Wilson
	Arleen Rogan	Anita Mandis
	Pamela Hardy-Cyran	Martha J. Arthur
	S. Beth Hart	Christine Hartman