



January 25, 2013

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Montgomery County Public Schools  
850 Hungerford Drive, Room 225  
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RE: XXXXX  
Reference: #13-020

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 Free Appropriate Public Education (FAPE) from October 24, 2012 to November 28, 2012, 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 28, 2012, in accordance with 34 CFR §§300.101, .111, and .323.

**INVESTIGATIVE PROCEDURES:**

1. Ms. Tyra Williams, 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. XXXXXX, Administrator, Residential Services, XXXX XXXXXXXXXXXXXXXXXXXX, XXXXXXXXXXXXXXXXXXXX, regarding the allegation in this complaint and related complaints involving other students. XXXXXXXXXXXXXXXXXXXX is a XXXX XXXX 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, Associate Superintendent, Department of Special Education and Student Services, MCPS, of the allegation and requested that her office review the alleged violation.

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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. Christine Hartman, Education Program Specialist, MSDE, who is the complaint investigator in a related case involving a different student, 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. XXXX and requested documentation concerning the allegation being investigated. On that same day, Ms. XXXX 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)<sup>1</sup>, via electronic mail (email) and requested documentation concerning the allegation being investigated.
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.
15. On December 17, 2012, Ms. Moyo, Ms. Mandis, Ms. Hartman, Ms. Williams and Mrs. Martha J. Arthur, Education Program Specialist, MSDE, conducted a site visit at the

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<sup>1</sup> On January 9, 2013, the MSDE/JSEP assumed responsibility for the juvenile services educational program at XXXXXXXXXXXXXXXXXXXX and is responsible for developing and implementing educational services at the residential facility (Doc. o and Md. Code Ann., Educ., §22-303 (2010)).

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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. XXXXXXXXX, Principal, XXXXXXXXXXXXX.

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 electronic mail (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 education services, and identified an additional allegation subject to this investigation. On the same date, the MSDE notified Mrs. Richardson, MCPS, 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 and 23, 2013, the complainant provided the MSDE with documents to be considered for the investigation.
19. On January 11, 2013, Ms. Williams contacted Ms. Hardy-Cyran, DJS, to request documents for the investigation, via email.
20. On January 14, 2013, Ms. Hartman and Ms. Williams conducted an interview with Ms. Johnson, MSDE/JSEP, at the MSDE and requested documents from the student's educational record.
21. On January 17 and 18, 2013, the DJS provided the MSDE with documentation to be considered during the investigation.
22. 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. The DJS Related Services Log, dated May 8, 2012 through January 8, 2012;
  - c. Individualized Education Program, dated September 10, 2012;

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- d. XXXXXXXXXXXX Attendance Roster, dated October 1, 2012 through November 30, 2012;
- e. Montgomery County Circuit Court Order, dated October 24, 2012;
- f. XXXXXXXXXXXXXXXXXXXX, dated October 1, 2012 through November 27, 2012;
- g. The MCPS Request for Transportation to and from school, dated October 26, 2012;
- h. Montgomery County Circuit Court Order, dated November 7, 2012;
- i. The DJS Related Services Referral, dated November 28, 2012;
- j. Montgomery County Circuit Court Order, dated November 28, 2012;
- k. Montgomery County Circuit Court Order, dated December 7, 2012;
- l. Montgomery County Circuit Court Order, dated January 3, 2013;
- m. Student Record of Instruction, dated January 8, 2012;
- n. Email from MSDE/JSEP, dated January 15, 2013; and
- o. Email from DJS, dated January 18, 2013.

**BACKGROUND:**

The student, who is committed to the custody of the DJS, is fifteen (15) years old and identified as a student with an emotional disability under the IDEA. He has an Individualized Education Program (IEP) that requires the provision of special education instruction and related services.

On October 24, 2012, the student was placed by a Court Order into the care and custody of the Department of Juvenile Services (DJS). From October 24, 2012 until November 7, 2012, the DJS placed the student in the XXXXXXXXXXXX, a temporary XXXX located in Montgomery County, hereafter “XXXXXXXXXXXXXXXXXX.” During his placement at the XXXXXXXX XXXX, the student did not participate in an education program.

On November 7, 2012, the student was placed in his mother’s custody by Court Order. At that time, the student returned to the XXXXXXXXXXXX of Montgomery County (XXXXXX XXXXX), a nonpublic separate special education day school where he had been placed by the MCPS prior to being placed by the DJS at the XXXXXXXXXXXX.

From November 21, 2012 through November 28, 2012, the student was hospitalized. On November 28, 2012, upon discharge from the hospital, the student was placed by Court Order into the custody of DJS at the XXXXXXXXXXXXXXXXXXXXXXXX (XXXX)<sup>2</sup>, where he has continued to participate in the education program located on grounds of that facility (Docs. a, d, e, f, h, j, k, l, n, o and interview with probation officer).

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<sup>2</sup> XXX is a XXXXXXX facility for youth waiting to go to court or to be placed in a XXXXX facility, which is located in Montgomery County. Youth residing at XXXXX attend school on the grounds of the facility, where the educational program was operated by the DJS until January 9, 2013 (<http://www.djs.state.md.us/XXXX-XXXX.asp>).

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

### **Findings of Facts:**

1. The student was placed by the DJS in the XXXXXXXXXXXXX on October 24, 2012 (Docs. e and f).
2. On October 26, 2012, the MCPS Placement and Assessment Services completed a referral to the MCPS Department of Transportation in order to arrange for the student to return to his school of origin. However, prior to the completion of these transportation arrangements, the student was returned to the custody of his mother (Docs. f, g, and h).

### **Discussion/Conclusion:**

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).

Highly mobile students, homeless students, and students who are parentally-placed in private schools located within the jurisdiction are among those students 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

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parent or guardian. When determining the best interest of the student, various factors, such as the distance of the commute and the impact on the student's education, must be considered (COMAR 13A.05.09.04).

Based on the Findings of Facts #1 and #2, the MSDE finds that the MCPS took steps to ensure that the student, a resident of Montgomery County, who qualified as a homeless student, continued attendance in his school of origin, during the period of homelessness. Therefore, the MSDE does not find that a violation with respect to this allegation.

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

### **Findings of Facts:**

3. The student's IEP requires the provision of special education instruction in the areas of reading, written language, math, and social/emotional/behavioral skills by a special education teacher for thirty (30) hours and forty-five (45) minutes per week. The student's related services include counseling services for one (1) hour per week provided by a school social worker and speech/language therapy for forty-five (45) minutes per week provided by a speech/language pathologist. The IEP requires that these special education services be provided at a nonpublic separate special education day 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. c).
4. On November 28, 2012, the DJS placed the student at XXXX, where he continues to reside. On the same date, the student was enrolled in the education program at XXXX (Docs. j, k, and l).
5. The related service provider progress reports document that the student has been provided with counseling services, to assist him with his behavior issues, social interaction skills, and self-management skills, as required by the IEP (Docs. b, j, and m).
6. There is no documentation that the student has received the special education instruction and speech/language therapy required by the IEP (Docs. b and m).

### **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

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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 #3 - #5, the MSDE finds that there is documentation that the student has been provided with the counseling services required by the IEP, since November 28, 2012. However, based on the Findings of Facts #3, #4, and #6, the MSDE finds that there is no documentation that the student has been provided with the special education instruction and speech and language therapy required by the IEP since November 28, 2012. Therefore, the MSDE finds that a violation occurred with respect to this aspect of the allegation.

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

The DJS must provide documentation by February 1, 2013 that it has worked in collaboration with the MSDE/JSEP to ensure that the student is receiving the special education instruction and related services required by the IEP. Additionally, the MSDE requires the DJS to work with the MSDE/JSEP to convene an IEP team meeting no later than February 15, 2013, to determine the amount of and nature of *compensatory services*<sup>3</sup> or another remedy to remediate the ongoing loss of services since November 28, 2012.

The student's parent must be provided 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, she maintains the right to request mediation or file a due process complaint, in accordance with the IDEA.

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 Mrs. Martha J. Arthur, Education Program Specialist, MSDE. Mrs. Arthur may be contacted at (410) 767-0255.

Please be advised that both 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

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<sup>3</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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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 student's parents and the school system 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/tw

cc :    XXXXXXXXX  
          Joshua P. Starr  
          Julie Hall  
          Sharon Gooding  
          XXXXXXX  
          William Fields  
          Maria Lamb  
          John T. McGinnis  
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