



Karen B. Salmon, Ph.D.
State Superintendent of Schools

200 West Baltimore Street • Baltimore, MD 21201 • 410-767-0100 • 410-333-6442 TTY/TDD • msde.maryland.gov

June 15, 2016

Grace Reusing, Esq.
Assistant Public Defender
Office of the Public Defender
District 01 – Baltimore City
Juvenile Protection Division
217 East Redwood Street, Suite 1000
Baltimore, Maryland 21202

Ms. S. Beth Hart
Director, Juvenile Services Education
Maryland State Department of Education
200 West Baltimore Street
Baltimore, Maryland 21201

RE: XXXXX
Reference: #16-108

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 April 19, 2016, 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) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to the above-referenced student.

The MSDE investigated the following allegations:

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 XXXXXXXXXXXX

XXXXXXXXXXXX (XXXXX) from July 21, 2015 to December, 2015, in accordance with 34 CFR §§300.101 and .323.

2. The JSE did not ensure that the IEP team addressed the lack of expected progress while the student was placed at the XXXX from July 21, 2015 to December, 2015, in accordance with 34 CFR §300.324.
3. The JSE did not ensure that the student was provided with special education instruction by teachers who hold a valid Maryland certification in the areas of instruction at the XXXX from July 21, 2015 to December 2015, in accordance with 34 CFR §§300.2, .18, .101, .156, .323, and COMAR 13A.05.11.07 and 13A.12.01.01.
4. The JSE did not ensure that the student was provided with a six hour school day while he was placed at the XXXXX from July 21, 2015 to December 2015, in accordance with COMAR 13A.05.11.04.

INVESTIGATIVE PROCEDURES:

1. On April 22, 2016, the MSDE sent correspondence to the complainant that acknowledged receipt of the correspondence 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 May 3, 2016 and June 8, 2016, Ms. Anita Mandis, Section Chief, Complaint Investigation Section, MSDE, requested documents from the JSE.
3. On May 6, 2016, the complainant provided documentation to the MSDE.
4. On May 4 and 27, 2016, Ms. Mandis met with Ms. Dawn Hubbard, Compliance Specialist, JSE, to review documents and discuss the allegations.
5. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
 - a. IEP, dated March 10, 2015;
 - b. Progress reports from August, October, and November 2015;
 - c. IEP, dated December 15, 2015;
 - d. Maryland Department of Juvenile Services (DJS) Placement Summary;
 - e. Samples of work sheets provided to the student;
 - f. Correspondence from the complainant alleging violations of the IDEA, received by the MSDE on April 19, 2016; and
 - g. Student Record Card 7 (SR 7).

BACKGROUND:

The student is eighteen (18) years old, is identified as a student with an Intellectual Disability under the IDEA, and has an IEP that requires the provision of special education instruction (Docs. a and c).

During the period of time covered by this investigation, the student has had the following residential and educational placements:

- From July 21, 2015 to September 2, 2015, the Maryland Department of Juvenile Services (DJS) placed the student at the XXXXXX.
- On September 2, 2015, the DJS placed the student at XXXXXXXXXXXXXXXX, but the student “went XXXXX” on September 15, 2015.
- The student was again placed by the DJS at the XXXXXX from September 18, 2015 to December 11, 2015.
- On December 11, 2015, the DJS placed the student at the XXXXXXXXXXX – XXXXXXXXXXX shelter care facility.
- From December 14 to 15, 2015, the DJS placed the student at the XXXXX after he “went XXXXX” from the XXXXXXXXXXXXXXXXXXXXXXXXXXXX shelter care facility.
- On December 15, 2015, the student was released into the community (Doc. d).

**ALLEGATIONS #1 AND #2 PROVISION OF SPECIAL EDUCATION IN THE
PLACEMENT REQUIRED BY THE IEP AND
ADDRESSING LACK OF EXPECTED PROGRESS**

FINDINGS OF FACTS:

1. On July 21, 2015, the DJS placed the student at the XXXXXX (Doc. d).
2. On July 22, 2016, the JSE requested the student’s educational record from the Baltimore City Public Schools (BCPS) (Review of the Special Education Folder Access Log and a July 22, 2016 electronic mail message from the JSE to the BCPS).
3. On July 23, 2015, the BCPS provided the JSE with a copy of the student’s IEP documents (Review of the Special Education Folder Access Log).
4. On July 24, 2015, the JSE staff reviewed the student’s educational record (Review of the Special Education Folder Access Log).

5. On July 28, 2015, the JSE requested additional documents from the BCPS, including the student's transcript (Review of the Special Education Folder Access Log and a July 28, 2015 Request for Records).
6. On July 29, 2015, the JSE received additional documents from the BCPSS, including the Student Record Card 7 (SR 7) listing the courses that the student was taking during the 2014-2015 school year and his report card for that year. There is no indication that a transcript was provided in response to the JSE's request. However, the report card reflects that the student had been placed in the seventh grade for the 2014-2015 school year, but that he did not pass any of his classes (Review of the Student Record Card 7 (SR 7) from the BCPS and the student's 2014-2015 report card).
7. There is no documentation that another request was made by the JSE to the BCPSS to obtain the student's transcript, and the student was placed in eighth grade classes in error (Doc. b and review of the educational record).
8. On September 2, 2015, the DJS placed the student at XXXXXXXXX, but the student absconded on September 15, 2015 (Doc. d and review of the Special Education Folder Access Log).
9. On September 18, 2015, the student was again placed by the DJS at the XXXX (Doc. d and review of the Special Education Folder Access Log).
10. On September 23, 2015, the JSE again requested the student's educational record from the BCPS, and on September 26, 2015, the JSE enrolled the student into seventh grade classes in English, reading, history/social studies, science, and math (Review of the Special Education Folder Access Log, a September 23, 2015 Request for Records, and the Student Enrollment and Schedule Form).
11. While the student was placed by the DJS at the XXXXX, he had an IEP that was developed by the BCPS on March 10, 2015. The IEP states that the student is working towards earning a Maryland High School Certificate of Program Completion, and contains the following goals to improve his reading comprehension and math skills:
 - A goal for the student to use grade level texts to improve his reading comprehension with exposure beyond the first grade level to the end of the second grade level. The goal reflects that the student's progress towards mastery of this goal will be measured by his ability identify details and the main idea of reading materials and make predictions about what will happen next in the text.
 - A goal for the student to analyze number relations and compute with exposure beyond the first grade level to the mid second grade level by multiplying and dividing whole numbers, and adding and subtracting fractions with like denominators.

- A goal for the student to apply a variety of concepts to solve problems beyond the first grade level to the end of the second grade level by identifying the question in a problem, making a plan to solve problems, and solving problems involving elapsed time (Doc. a).
12. The BCPS IEP states that the student “would benefit from a smaller, structured environment with a curriculum consisting of basic and functional life skills.” It requires that the student be provided with ten hours per week of special education instruction in the general education classroom and ten hours per week of special education instruction in a separate special education classroom in order to assist him with achieving the annual goals. The BCPS IEP clarifies that the special education instruction in the general education classroom is to include five hours per week to address language arts and five hours per week to address math. It further states that the student will be “pulled out of the general education environment twice daily for remediation in math and reading” (Doc. a).
 13. The BCPS IEP requires that the student be provided with a reduced number of answer choices. It also requires that there be weekly consultation between the general education teachers and the special education teacher in the planning for and provision of instruction in the general education environment (Doc. a).
 14. The BCPS IEP states that the student had a history of poor school attendance and had “made no real attempt to make any progress,” and that he was enrolled in “a comprehensive alternative program for over-aged students that offers a unique and age appropriate learning environment.” The IEP further states that the student requires a Behavior Intervention Plan (BIP), and that the one developed on January 23, 2012 remained appropriate, but that it should be reviewed by the IEP team when the student returned to a regular school program (Doc. a).
 15. The reports of the student’s classroom performance from August 2015 through November 2015 and a review of the XXXX class schedule reflect that the student was assigned to general education classes in English and math, and that he was provided with instruction from general and special education teachers in English and math (Doc. b and review of the XXXX Master Schedule).
 16. There is no documentation of weekly consultation between general and special education teachers (Review of the educational record).
 17. There is no documentation that the student’s BIP was implemented at the XXX (Review of the educational record).
 18. There is no documentation that the student’s work in English/language arts was modified to the student’s instructional level (Doc. e and review of the educational record).

19. The samples of the work sheets from the student's math class, some of which the student attempted to complete, required the multiplication of fractions, addition of fractions that did not contain like denominators, and division of decimals. In addition, the work sheets do not reflect that the student was provided with a reduced number of answer choices. Some of the work sheets required the student to solve problems involving lapsed time and to divide whole numbers, but he did not attempt to complete the work, and a notation from the math teacher on the work sheets states that the student "always refused" to work on the IEP goals (Doc. e).
20. The reports of the student's classroom performance from August 2015 through November 2015, state that the student was not making sufficient effort to complete classwork (Doc. b).
21. The reports of the student's progress towards achievement of the annual IEP goals, made on November 23, 2015, reflect that the student was not making sufficient progress on the goals due to interfering behavior, such as lack of participation and completion of work (Review of IEP goals reports, dated November 23, 2015).
22. On December 15, 2015, the IEP team convened and considered that the student was not making sufficient progress towards achievement of the goals. The team decided that special education instruction should be provided in all core classes in a separate special education classroom. The team also added supports such as the provision of notes and outlines during instruction and frequent checks for understanding, implementation of a behavior contract with the provision of positive, concrete reinforcements for on task behavior, encouragement to ask for assistance, and preferential seating (Doc. c and review of written summary of the December 15, 2015 IEP team meeting).

DISCUSSION/CONCLUSIONS:

Allegation #1 IEP Implementation in the Educational Placement Required

In this case, the complainant alleges that the student was not provided with special education instruction that was designed to assist him in achieving the annual goals using a "life skills curriculum" (Doc. f).

The IDEA requires that a student's IEP include measurable annual goals that are designed to both: (a) meet the needs that arise out of the student's disability; and (b) enable the student to be involved in and make progress in the general curriculum, which is defined as the same curriculum used for nondisabled students (34 CFR §300.320). In addition to the general academic achievement standards and assessments that apply to all children, States are permitted to define alternate academic achievement standards and administer alternate assessments based on those standards for those students with the most significant cognitive disabilities (34 CFR §300.160). These performance standards must be linked to grade level content

Grace Reusing, Esq.
Ms. S. Beth Hart
June 2016
Page 7

standards, although they are based on a limited sample of the content (MSDE Technical Assistance Bulletin 17, *Understanding the Criteria and Eligibility Process for Students with the Most Significant Cognitive Disabilities Participating in the Maryland Assessment Program*).

Although there is no separate “life skills curriculum,” the public agency is required to ensure that special education instruction is provided to assist the student with achieving the annual IEP goals 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). In order to do so, each public agency is required to ensure that student educational records are properly maintained (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).

The *Maryland Student Records System Manual* requires that when a student transfers to another school, the sending school provide the receiving school with data using a Student Record Card 7 (SR 7). The SR 7 includes information about the courses in which the student was enrolled, including course titles for students in secondary school. The sending school must also share with the receiving school a transcript of the credits earned by each student (*Maryland Student Records System Manual*, 2011).

The complainant further alleges that the JSE did not ensure that the student was provided with special education instruction in the general education classroom with weekly consultation between the general and special education teachers as required by the IEP (Doc. f).

While the complainant provides samples of work sheets from the student’s science and social studies classes that contain reading material that is well above the student’s instructional level, based on the Findings of Facts #12 and #22, the MSDE finds that the IEP did not require special education instruction in these classes until the JSE IEP team revised the IEP on December 15, 2015.

Based on the Finding of Fact #12, the MSDE finds that the IEP required that the student be provided with special education instruction in the areas of English/language arts and math in both the general and separate special education classrooms. Based on the Findings of

Facts #11 - #19, the MSDE finds that, while there is evidence that student was placed in general education classes in English/language arts and math, there is no documentation that the student was provided with instruction that was modified in accordance with the IEP.

In addition, based on the Findings of Facts #1 - #10, the MSDE finds that, from July 21, 2015 to September 2, 2015, the JSE did not ensure that the student was placed in appropriate grade level classes based on the records provided by the BCPS.

Further, based on the Findings of Facts #13, #14, #16, and #17, the MSDE finds that the JSE did not ensure that the BIP was implemented or that weekly consultation between the general and special education teachers occurred, as required by the IEP. Therefore, this office finds that violations occurred with respect to the allegation.

Allegation #2 Addressing Lack of Expected Progress

The public agency must ensure that, in the case of a student whose behavior impedes the student's learning or that of others, the IEP team considers the use of positive behavioral interventions and supports, and other strategies to address the behavior (34 CFR §§300.101, .320, and .324).

The public agency must also ensure that the IEP team reviews the IEP periodically, but not less than annually, to determine whether the annual goals are being achieved. In addition, the public agency must ensure that the IEP team revises the IEP, as appropriate, to address any lack of expected progress toward achievement of the annual IEP goals (34 CFR §300.324).

Based on the Findings of Facts #20 - #22, the MSDE finds that the JSE ensured that the IEP team convened to consider positive behavioral interventions to address the interfering behavior that was resulting in a lack of expected progress towards achievement of the goals. Therefore, this office does not find that a violation occurred.

**ALLEGATION #3: PROVISION OF SPECIAL EDUCATION INSTRUCTION
FROM TEACHERS WHO ARE CERTIFIED IN THE AREAS
TAUGHT**

FINDING OF FACT:

23. There is documentation that during the time period that the DJS placed the student at the XXXXXX, he was provided with special education instruction in English and math by teachers who hold certification in the areas of instruction provided and in special education (Doc. b and review of personnel records).

DISCUSSION/CONCLUSIONS:

The IDEA requires that the State Education Agency 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 (34 CFR §§300.18, .101, .156, .323).

The JSES 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 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).

Based on the Finding of Fact #23, the MSDE finds that the student was provided with special education instruction in English/language arts and math by teachers who held certification in the instruction provided and in special education. Therefore, this office does not find a violation with respect to the allegation.

ALLEGATION #4 PROVISION OF A SIX HOUR SCHOOL DAY

FINDINGS OF FACTS:

24. A review of the XXXX school calendar reflects that there are six hours of instruction built into the schedule each day (Review of the XXXX Master Schedule).
25. An October 7, 2015 progress report documents that the student was taking five classes at that time at the XXXX. However, grades were only reported in two of those classes (Doc. b).
26. An October 23, 2015 progress report documents that the student was continuing to take the classes reflected in the October 7, 2015 progress report. However, the October 23, 2015 progress report includes grades for all five classes (Doc. b).
27. The Student Record Card 7 (SR 7) issued for the student by the XXXX reflects that he was assigned grades for all five classes reflected in the October 7 and 23, 2015 progress reports (Doc. g).

DISCUSSION/CONCLUSIONS:

The IDEA requires that each educational program for students with disabilities meet the educational standards of the State Education Agency (34 CFR §300.149).

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

Grace Reusing, Esq.
Ms. S. Beth Hart
June 2016
Page 10

MSDE, JSEP to provide a comprehensive education program for youth in these facilities (COMAR 13A.05.11).

The regulations that were developed require the educational program in each DJS facility to operate at least 220 school days and a minimum of 1,320 school hours during a 12-month period. Each educational program must have a written calendar that states the specific days and total number of days for the implementation of the program, a written schedule that states the beginning and end of the 6-hour school day, and the specific time periods during the school day when the areas of instruction are implemented (COMAR 13A.05.11.04).

In this case, the complainant alleges that the student was not provided with six hours of instruction each day because an October 7, 2015 Progress Report contains information about the student's progress for only two classes (Doc. f).

Based on the Findings of Facts #24 - #27, the MSDE finds that there is documentation that the student was provided with a six hour school day while placed at the XXXXX. Therefore, this office finds that no violation occurred.

CORRECTIVE ACTIONS/TIMELINE:

The MSDE requires the JSE to provide documentation by September 1, 2016 that compensatory services or other agreed upon remedy has been offered for the violation identified. When considering the compensatory services required to redress the loss of appropriate services during this time period, the public agency and the parent may consider alternative methods to redress the loss of appropriate services to the student. The alternative methods may include, but are not limited to, compensatory services in the form of transition services to assist the student with transition from high school to post-school activities.

The MSDE further requires the JSE to provide documentation by September 1, 2016 of the steps taken to ensure that the XXXX staff properly implements the requirements for the provision of special education instruction in accordance with the IEP. The documentation 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.

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 JSES 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

Grace Reusing, Esq.
Ms. S. Beth Hart
June 2016
Page 11

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 of facts, conclusions, and corrective actions contained in this letter should be addressed to this office in writing. The student's parents and the JSES 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
 Henry Johnson
 Karen Salmon
 Crystal Fleming-Brice
 Anna Lisa Nelson
 Dawn Hubbard
 XXXXXX
 Dori Wilson
 Anita Mandis
 Nancy Birenbaum
 Elizabeth Kameen
 Elliott L. Schoen
 Alan Dunklow