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State Superintendent of Schools

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July 7, 2016

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

RE: XXXXX  
Reference: #16-114

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 20, 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 by both special education and general education teachers, as required by the Individualized Education Program (IEP), while he was placed by the Maryland

Department of Juvenile Services (DJS) at the XXXXXXXXXXXXXXXXXXXX (XXX) from September, 2015 to November 5, 2015, in accordance with 34 CFR §§300.101 and .323.

2. The JSE did not ensure that the revisions made to the IEP while the student was placed by the DJS at the XXX from September, 2015 to November 5, 2015 were made based on the student's needs, in accordance with 34 CFR §300.324.
3. The JSE did not ensure that the student's educational record was maintained while he was placed by the DJS at the XX from September, 2015 to November 5, 2015, in accordance with COMAR 13A.05.11.09 and 13A.08.02.
4. The JSE did not ensure that the student was provided with special education instruction to assist him with achieving goals to improve reading skills, as required by the IEP, while he was placed by the DJS at the XXXXXXXXXXXXXXX (XXXX) from November 5, 2015 to March 15, 2016, in accordance with 34 CFR §§300.101 and .323.
5. The JSE did not ensure that the student was provided with the opportunity to earn service learning hours necessary to progress towards the standards for graduation while he was placed by the DJS at the XXXX from September, 2015 to November 5, 2015 and at the XXX from November 5, 2015 to March 15, 2016, in accordance with COMAR 13A.03.02.05. and 13A.05.11.03.
6. 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 XXX from September, 2015 to November 5, 2015 and at the XXXX from November 5, 2015 to March 15, 2016, in accordance with 34 CFR §§300.2, .18, .101, .156, .323, and COMAR 13A.05.11.07 and 13A.12.01.01.

#### **INVESTIGATIVE PROCEDURES:**

1. On April 26, 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, Ms. Anita Mandis, Section Chief, Complaint Investigation Section, MSDE, requested documents from the JSE.
3. On May 5, 2016 and July 5, 2016, Ms. Mandis met with Ms. Dawn Hubbard, Compliance Specialist, JSE, to review documents and discuss the allegations.
4. On June 21, 2016, the complainant provided documentation to the MSDE.

5. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
  - a. IEP, dated May 26, 2015 and written summary of the IEP team meeting;
  - b. IEP, dated June 9, 2015 and written summary of amendment of the IEP;
  - c. IEP, amended on September 25, 2015 and March 25, 2016;
  - d. Student record card 7 (SR 7) from September 21, 2015 to November 5, 2015;
  - e. Student record card 7 (SR 7) indicating an entry date at the XXXX of November 5, 2015;
  - f. Correspondence from the complainant alleging violations of the IDEA, received by the MSDE on April 20, 2016;
  - g. Maryland Department of Juvenile Services (DJS) Placement Summary; and
  - h. *JSE Program of Studies, Course Offerings and Descriptions*, July 2014.

### **BACKGROUND:**

The student is seventeen (17) years old, is identified as a student with a Specific Learning Disability under the IDEA, and has an IEP that requires the provision of special education instruction (Docs. a - c).

From September 16, 2015 to November 5, 2015, the Maryland Department of Juvenile Services (DJS) placed the student at the XXX. He was enrolled in the JSE from September 21, 2015 to November 5, 2015 (SR 7). Prior to his placement at the XXX the student was placed in a local adult correctional facility in Prince George's County (Docs. c, d, f, and g).

From November 5, 2015 to March 17, 2016, the DJS placed the student at the XXX, and he was enrolled in the JSE (Docs. c, e, f, and g).

On March 17, 2016, the student returned to the community (Docs. e, f, and g).

### **ALLEGATIONS #1 - #4**

### **PROVISION OF SPECIAL EDUCATION BY SPECIAL EDUCATION AND GENERAL TEACHERS, REVISIONS TO THE IEP, MAINTENANCE OF THE RECORD, AND PROVISION OF SPECIAL EDUCATION INSTRUCTION IN READING**

### **FINDINGS OF FACTS:**

1. On May 26, 2015, the Prince George's County Public Schools (PGCPS) developed the IEP, which requires ten hours per week of special education instruction to assist the student with achieving annual goals in reading, written language, math and self-management. The Services Section of the IEP states that the student was to be provided with special education instruction in the general education classroom primarily from a general education teacher in an "intensive setting classroom." However, the Least

Restrictive Environment Section (LRE) of the IEP states that the IEP team considered “placement in general education with special education resource support as well as the co-taught classroom setting and the intensive setting,” and decided that “the co-taught setting is the most appropriate for [the student] as the intensive setting may result in increased school absences and reversion to challenging behaviors.” The written summary of the IEP team meeting states that the IEP team “considered and accepted placement within the general education classroom environment as a co-taught student for all core subject areas” (Doc. a).

2. On June 9, 2015, the PGCPs and the student’s parent amended the IEP to reduce the amount of special education instruction to seven and one-half hours per week, and to change the educational placement “from a co-teach setting to general education in the correctional setting.” The Services Section of the IEP states that “while being detained with the [local adult correctional facility], [the student] will receive special education services in English and math provided by a special educator.” However, it also states that the special education instruction will be provided by “the IEP team.” In addition, the LRE Section of the IEP continues to state that “the co-taught setting is the most appropriate for [the student]” (Doc. b).
3. There is no documentation that the IEP has been reviewed and revised by an IEP team since May 26, 2015 (Review of the educational record).
4. The IEP includes goals for the student to read unknown words using phonics skills and to identify and use text features to develop reading comprehension skills. The reading comprehension goal contains short-term objectives for the student to respond to short answer, analytical questions that require making inferences using explicit information in text, identify main ideas in text and providing supporting details, and use context clues and work structure to determine the meaning of unfamiliar vocabulary (Docs. a - c).
5. The reading phonics goal contains a short-term objective that “by the end of the 2014-2015 school year, given a list of 40 regular and irregular unfamiliar multisyllabic words, [the student] will be able to decode and count the number of syllables for 30/40 words correctly in 4 out of 5 2+ syllable word reading activities.” A report of the student’s progress towards achievement of the goal, which was generated on February 19, 2016, states that the student is making sufficient progress to meet the goal, despite the fact that the short-term objective to be achieved by the end of the 2014-2015 school year had been continued beyond the 2014-2015 school year (Docs. a - c).
6. The Student Record Card 7 (SR 7) completed at the XXX reflects that the student received related services at the facility (SR 7). It also reflects that the student was enrolled in both an English class and a separate reading class (Doc. d).
7. The SR 7 completed by the XXX reflects that the student did not receive related services while placed at the facility. It reflects that, while the student was enrolled in an English class, he was not enrolled in a separate reading class (Doc. e).

8. There is no documentation that the IEP has required the provision of related services (Docs. a - c).
9. The *JSE Program of Studies, Course Offerings and Descriptions*, in effect during the time period covered by this investigation, reflects that the JSE offers courses in English that are aligned with the Career and College Readiness Standards for English Language Arts. Those courses focus on the development and mastery of reading, writing, language, listening, and speaking skills. During the time period covered by this investigation, the JSE also offered a separate reading course focused on basic reading skills, functional reading, vocabulary, and comprehension skills, which could not be used to meet the State graduation requirements in English (Doc. h).
10. Samples of the student's work in English, social studies, and science classes, dated between December 1, 2015 and March 16, 2016, document that the reading goals were addressed (Review of samples of the student's work).
11. The student's progress reports the school schedule from the XXX reflect that he was provided with special education instruction from general and special education teachers in his math, social studies, and science classes. There is no documentation that he was provided with special education instruction from a special education teacher in English (Review of September 23, 2015 and October 28, 2015 progress reports and the XXX school schedule).
12. There is documentation that, from January, 2016 through March, 2016, special education instruction was provided in the student's English class by a special education teacher at the XXX as follows: From January, 2016 through March, 2016, in the student's English class; From January, 2016 through February, 2016, in the student's math class; from February, 2016 through March, 2016 in the student's science class, and on one date in February, 2016, in the student's social studies class (Review of November 13, 2015, December 11, 2015, December 24, 2015, January 8, 2016, January 22, 2016, February 5, 2016, February 19, 2016, and March 4, 2016 progress reports and staffing documents).

## **DISCUSSION/CONCLUSIONS:**

### **Allegation #1                      Provision of Special Education Instruction by General and Special Education Teachers**

Each public agency must ensure that students are provided with the special education and related services required by the IEP. In order to do so, the public agency must ensure that the IEP is written in a manner that is clear with respect to the special education and related services that are to be provided (34 CFR §§300.101, .320 and .323).

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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 this case, the complainant alleges that the student was not provided with special education instruction from both special education and general education teachers, as required by the IEP (Doc. f).

Based on the Findings of Facts #1 - #3, #11, and #12, the MSDE finds that, while there is documentation that the student was provided with special education instruction from both general and special education teachers, the IEP from the PGCPS is not written clearly with respect to who is responsible for the provision of special education instruction. Thus, the MSDE finds that the JSE could not ensure that the services were provided as intended, and was obligated to review and revise the IEP to clarify the matter. Therefore, this office finds that a violation occurred.

### **Allegations #2 and #3**

### **Revision of the IEP and Maintenance of the Record**

The public agency must 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).

In making changes to an IEP after the annual IEP team meeting for a school year, the parent and the public agency may agree not to convene an IEP team meeting for the purposes of making those changes, and instead may develop a written document to amend or modify the IEP. Otherwise, any revisions made to the IEP must be made through the IEP team process (34 CFR §300.324).

As indicated above, 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 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 ensure the provision of appropriate services to a transferring student, the new public agency must take reasonable steps to promptly obtain the student's educational record, including the IEP and supporting documents and any other records relating to the provision of special education or related services to the student, from the previous public agency in which the student was enrolled (34 CFR §300.323).

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 documentation of the credits earned by each student, which may be recorded on the Student Record Card 3 (SR 3) (*Maryland Student Records System Manual*, 2011).

The complainant alleges that, because the SR 7 indicates that the student was provided with related services at the XXX but not at the XXX, the IEP must have been revised to remove those services without convening an IEP team or obtaining an agreement of the parent (complaint). The complainant also alleges that, because the SR 7 indicates that the student was provided with related services at the XXXX, there should be documentation of the provision of those services, such as through service provider logs, but that they were not maintained in the record (Doc. f).

Based on the Findings of Facts #1 - #3, and #8, the MSDE finds that there is no evidence that the student required related services prior to being placed at the XXX, and no documentation that the school staff at the XXX made an amendment to the IEP to discontinue such services. However, based on the Findings of Facts #4 and #5, the MSDE finds that the IEP team did not review and revise the IEP to address the lack of expected progress towards achievement of the reading phonics goal. Therefore, the MSDE finds that a violation occurred with respect to Allegation #2.

In addition, based on the Findings of Facts #6 - #8, the MSDE finds that the JSE did not ensure that the SR 7 contained accurate information while the student was placed at the XXX. Therefore, this office finds that a violation occurred with respect to Allegation #3.

#### **Allegation #4                      Provision of Special Education Instruction in Reading**

As stated above, each public agency must ensure that students are provided with the special education and related services required by the IEP (34 CFR §§300.101 and .323). In this case, the complainant alleges that, because the student was not enrolled in a separate reading class at the XXX, the annual reading goals were not addressed through special education instruction (Doc. f).

Based on the Findings of Facts #4 - #7, #9, and #10, the MSDE finds that there is evidence that the reading goals were addressed through the student's English, social studies, and science classes. Therefore, this office does not find that a violation occurred with respect to the allegation.

**ALLEGATION #5:                    OPPORTUNITY TO EARN SERVICE LEARNING HOURS  
   AT THE XXX AND THE XXX**

**FINDINGS OF FACTS:**

13. All public agencies in Maryland, including the JSE, have chosen to design local programs in student service to address their unique academic and community needs. Some school systems require that students conduct independent service-learning projects to fulfill part of the graduation requirement. In these school systems, students are given guidelines stating how much service is expected and which organizations are appropriate sites for service. They infuse service-learning into existing courses as all or part of their plan. In most cases, students complete all service learning elements – preparation, action, and reflection – as part of their regular school day. In other school systems, students carry out one or more elements as part of a class and perform the remaining elements on their own after school or on weekends (<http://marylandpublicschools.org>).
14. The JSE’s service learning plan indicates that students in grades 7 – 12 participate in both school-wide and content-based service-learning projects, which are extended instructional activities that expand academic concepts taught in the classroom. Students entering a DJS facility become engaged in ongoing content-based academic projects with instruction provided at their individual levels of performance. Effective January, 2016, activities are offered each spring and fall in all JSE schools. The spring activity offered at all JSE schools, including the XXX, from January 2016 to July 2016 involves participation in a worldwide initiative to knit/crochet blankets for the less fortunate (Review of photographs of blankets at XXX, and <http://marylandpublicschools.org>).
15. At the school level, service-learning plans are implemented by principals by assisting with projects plan development, ensuring that plans are executed as designed, monitoring implementation, supervising staff involved in plan execution, ensuring that students complete the required reflection essay, and overseeing documents of student service-learning hours (<http://marylandpublicschools.org>).
16. The XXX offers a school-wide project entitled, “Environmental Enhancement,” which involves students constructing wooden planter boxes, planting flowers, and painting a mural outside the entrance to the school building to enhance the environment. It also offers a content-based project entitled, “Frederick County 4-H Therapeutic Riding Program,” in which students work at the stable of a non-profit organization that provides recreational experiences to Frederick County citizens with disabilities through equestrian activities (<http://marylandpublicschools.org>).
17. The JSE Local School System Annual Service-Learning Experience Tally, which was submitted to the MSDE at the end of the 2014-2015 school year, reflects that 284 JSE students earned a total of 1,376 service-learning hours. However, there is no documentation that any of these hours were earned at the XXX and no documentation of a school-wide project at the XXX in effect prior to the implementation of spring and fall

projects at all JSE schools in January 2016 (Review of the JSE Local School System Annual Service-Learning Experience Tally, dated June 24, 2015).

### **DISCUSSION/CONCLUSIONS:**

To be awarded a Maryland High School Diploma, a student must also have completed either 75 hours of student service that includes preparation, action, and reflection components, and that, at the discretion of the local school system, may begin during the middle grades, or a locally designed program in student service that has been approved by the State Superintendent of Schools (COMAR 13A.03.02.06).

In this case, the complainant alleges that the XXX and the XXX do not provide opportunities for students to earn service learning hours (Doc. f).

Based on the Findings of Facts #13 - #16, the MSDE finds that there were service learning activities at the XXX while the student was placed at the facility. However, based on the Findings of Facts #14 and #17, the MSDE finds that there is no documentation that there were service learning activities at the XXX when the student was placed at the facility, and thus, that a violation occurred.

Notwithstanding the violation, based on the Finding of Fact #14, the MSDE finds that there are currently service learning activities available at all of the JSE schools, including at the XXX. Therefore, no corrective action is required.

### **ALLEGATION #6:                   PROVISION OF SPECIAL EDUCATION INSTRUCTION FROM TEACHERS WHO ARE CERTIFIED IN THE AREAS TAUGHT AT THE XXX AND THE XXX**

### **FINDINGS OF FACTS:**

18. The student's history teacher at the XXX held certification in the area of instruction provided. None of the students other teachers at the XXX held certification in the areas of instruction (Review of staffing documents and September 23, 2015 and October 28, 2015 progress reports).
19. While the student was placed at the XX, there was an English teacher vacancy. There is currently a teacher assigned to provide English instruction at the XXX who holds certification in the area of instruction provided (review of staffing documents and September 23, 2015 and October 28, 2015 progress reports).
20. The student's science teacher at the XXX held certification in the area of instruction provided. None of the students other teachers at the XXX held certification in the areas of instruction (Review of November 13, 2015, December 11, 2015, December 24, 2015,

January 8, 2016, January 22, 2016, February 5, 2016, February 19, 2016, and March 4, 2016 progress reports and staffing documents).

21. While the student was placed at the XXX, there was a math teacher vacancy, and instruction was provided by an instructional assistant. There is documentation that, in February 2016, the XXX principal made arrangements with the JSE for supervision of the instructional assistant who was teaching math by a certified math teacher. However, there is no documentation of supervision of the instructional assistant from a certified math teacher from November, 2015 through January, 2016. There is currently a teacher assigned to provide math instruction at the XXX who holds certification in the area of instruction provided (Review of staffing documents).
22. While there is documentation of the supervision of some of the non-certified teachers by teachers holding certification, there is no consistent documentation that all of the teachers were supervised during the time period covered by this investigation (Review of the supervision logs).

### **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. However, this requirement does not create a right of action on behalf of an individual student or class of students for the lack of the provision of instruction by an individual who is not qualified (34 CFR §§300.18, .101, .156, .323).

The JSE 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).

The *JSE Special Education Policy and Procedures* state that, in the event that a content area teacher is not available to provide instruction for an extended period of time, a certified teacher will provide oversight to the staff designated to provide instruction (Doc. o).

In this case, the complainant asserts that, while the public agency has developed procedures to strengthen recruitment efforts and to obtain substitute teachers who are supervised by certified teachers while vacancies are being filled, these procedures are not being implemented (Doc. f).

Based on the Findings of Facts #18 - #22, the MSDE finds that there has not been consistent provision of special education instruction from teachers who hold certification in the areas of instruction provided and there no documentation that supervision has been provided as required by the JSE procedures. Therefore, this office finds that a violation occurred.

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Notwithstanding the violation, no student-specific corrective action is required since there is no right of action on behalf of an individual student or class of students for the lack of the provision of instruction by an individual who is not qualified.

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

#### **Student-Specific**

The MSDE requires that the JSE provide documentation by September 30, 2016 that compensatory services or other agreed upon remedy has been offered for the violation related to ensuring that the IEP addressed the student's reading phonics needs and that special education instruction was provided in the manner required by the IEP.

When considering compensatory services, alternative methods to redress the loss of appropriate services may be considered. This includes, but is not limited to, services to assist the student in obtaining a Maryland High School Diploma or a Maryland High School Diploma by Examination.

If the student is enrolled in an education program, the JSE must provide documentation of efforts to collaborate with the school system in which the student is enrolled to convene an IEP team meeting for the purpose of reviewing and revising the IEP to address the student's reading phonics needs and determining the services to be provided.

#### **School-Based**

The MSDE requires that the JSE provide documentation by November 1, 2016 of the steps taken to ensure that the XXX and the XXX school staff take the following action:

1. Each IEP that is not written clearly with respect to the services to be provided is reviewed and revised, as appropriate;
2. Each IEP is reviewed and revised, as appropriate, to address lack of expected progress; and
2. The supervision of non-certified teachers by certified teachers is documented, in accordance with the JSE procedures.

The documentation must include a description of how the JSE will evaluate the effectiveness of the steps taken and monitor to ensure that the violations do 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.

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Please be advised that the complainant and the JSE have the right to submit additional written documentation to this office, which must be received within fifteen (15) days of the date of this letter, if they disagree with the findings of facts or conclusions reached in this Letter of Findings. The additional written documentation must not have been provided or otherwise available to this office during the complaint investigation and must be related to the issues identified and addressed in the Letter of Findings.

If additional information is provided, it will be reviewed and the MSDE will determine if a 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 JSE 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 JSE 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:     XXXXXX  
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       Deborah Grinnage-Pulley  
       Crystal Fleming-Brice  
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