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July 21, 2016

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

RE: XXXXX
Reference: #16-124

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 May 9, 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 Individualized Education Program (IEP) was implemented while the student was placed by the Maryland Department of Juvenile

Services (DJS) at the XXXXXXXXXXXXXXXXXXXX (XXXXXX) from June, 2015 to September, 2015, in accordance with 34 CFR §§300.101 and .323, as follows:

- a. The student was not provided with the special education instruction by a special education teacher, as required by the IEP;
 - b. The student was not provided with special education instruction through a program designed to address social, emotional, and behavioral needs, as required by the IEP;
 - c. The student was not provided with the services of the Behavioral Intervention Plan (BIP);
 - d. The student was not provided with special education instruction in the educational placement required by the IEP; and
 - e. The student was not provided with the amount of counseling services required by the IEP.
2. The JSE did not ensure that the student was provided access to instruction in a core English course that allowed him to work towards achievement of credit requirements necessary for graduation while placed by the DJS at the XXXXXX from June, 2015 to September, 2015, in accordance with 34 CFR §§300.101, 103, .320, .323, and COMAR 13A.05.11.03.
 3. The JSE did not ensure that the student was provided with a six hour school day while he was placed by the DJS at the XXXX from June, 2015 to September, 2015, in accordance with COMAR 13A.05.11.04.
 4. 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 June, 2015 to September, 2015, in accordance with 34 CFR §§300.18, .101, .156, 323, and COMAR 13A.05.11.07 and 13A.12.01.01.
 5. The JSE did not ensure that the student's educational record was maintained while he was placed by the DJS at the XXXX from June, 2015 to September, 2015, in accordance with COMAR 13A.05.11.09 and 13A.08.02.
 6. The JSE did not ensure that the annual goals related to reading and written language were designed to assist the student in progressing through the general curriculum while he was placed by the DJS at XXXXXXXXXXXXXXXXXXXX (XXXXXX) from September, 2015 to March, 2016, in accordance with 34 CFR §300.320.

7. The JSE did not ensure that the IEP team reviewed and revised the IEP, as appropriate, to address lack of expected progress towards achievement of the annual goals related to the student's social, emotional, and behavioral needs, while he was placed by the DJS at XXXXXX from September, 2015 to March, 2016, in accordance with 34 CFR §300.323.
8. The JSE did not ensure that the revisions made to the educational placement in October, 2015, while the student was placed by the DJS at XXXX, were based on the student's needs in accordance with 34 CFR §§300.114, .116, .324 and *Analysis of Comments and Changes to the IDEA*, Federal Register, Vol. 71, No. 156, p. 46588, August 14, 2006.
9. The JSE did not provide proper written notice of the decisions made by the IEP team on October 27, 2015, while the student was placed by the DJS at XXXX, in accordance with 34 CFR §300.503.
10. The JSE did not ensure that the IEP was implemented while the student was placed by the DJS at XXXXXXXX from September, 2015 to March, 2016, in accordance with 34 CFR §§300.101 and .323, as follows:
 - a. The student was not provided with the special education instruction by a special education teacher, as required by the IEP;
 - b. The student was not provided with special education instruction through a program designed to address social, emotional, and behavioral needs, as required by the IEP;
 - c. The student was not provided with the services of the Behavioral Intervention Plan (BIP);
 - d. The student was not provided with special education instruction in the educational placement required by the IEP; and
 - e. The student was not provided with the amount of counseling services required by the IEP.
11. 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 XXXXXX from September, 2015 to March, 2016, in accordance with COMAR 13A.03.02.05 and 13A.05.11.03.
12. 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 XXXXXX

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from September, 2015 to March, 2016, in accordance with 34 CFR §§300.18, .101, .156, 323, and COMAR 13A.05.11.07 and 13A.12.01.01.

INVESTIGATIVE PROCEDURES:

1. On May 11, 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 June 3, 2016, Ms. Anita Mandis, Section Chief, Complaint Investigation Section, MSDE, requested documents from the JSE.
3. On July 5 and 15, 2016, Ms. Mandis met with Ms. Dawn Hubbard, Compliance Specialist, JSE, to review documents and discuss the allegations.
4. On July 14, 2016, Ms. Mandis, Ms. Hubbard, and Ms. Anna Lisa Nelson, Field Director, School Administration Services, JSE, met and reviewed staffing documents.
5. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
 - a. IEP, dated October 28, 2014;
 - b. Progress reports dated July 15, 2015 and August 26, 2015;
 - c. IEP, dated October 27, 2015 and Prior Written Notice document;
 - d. Student record card 7s (SR 7s);
 - e. Correspondence alleging violations of the IDEA, received by the MSDE on May 9, 2016;
 - f. *The JSE Program of Studies, Course Offerings and Descriptions;* and
 - g. *The Maryland Department of Juvenile Services, Data Resource Guide, Fiscal Year 2014.*

BACKGROUND:

The student is seventeen (17) years old, is identified as a student with an Other Health Impairment under the IDEA related to Attention Deficit Hyperactivity Disorder (ADHD), and has an IEP that requires the provision of special education instruction and related services (Docs. a and c).

From June 10, 2015 to July 17, 2015, the Maryland Department of Juvenile Services (DJS) placed the student at the XXX, where he participated in the JSE program from June 12, 2015 to July 17, 2015 (Doc. d and review of the DJS Placement Summary).

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From August 14, 2015 to September 1, 2015, the DJS placed the student at the XXXX, where he participated in the JSE program from August 19, 2015 to September 1, 2015, the (Doc. d and review of the DJS Placement Summary).

From September 1, 2015 to March 1, 2016, the DJS placed the student at XXXXXXXX, where he participated in the JSE program (Doc. d and review of the DJS Placement Summary).

On March 1, 2016, the student returned to the community, and on June 2, 2016, he was again placed by the DJS at the XXXXXXXX (Review of the DJS Placement Summary).

**ALLEGATIONS #1 - #3 AND #5 - #10 REVIEW, REVISION, AND
IMPLEMENTATION OF THE IEP AT THE
XXXXX AND XXXX AND MAINTENANCE
OF THE RECORD AT THE XXXXXXXX**

FINDINGS OF FACTS:

Provision of Special Education Instruction by Special Education Teachers using a Program Designed to Address Behavioral Needs in a Separate Special Education Classroom

1. When the student was placed by the DJS at the XXXX, he had an IEP that was developed by the Baltimore City Public Schools (BCPS) on October 28, 2014 (BCPS IEP). The BCPS IEP required the provision of seventeen and one-half hours per week of special education instruction from a special education teacher in a separate special education classroom, and thirty minutes per week of psychological services from a psychologist. The IEP states that the student “will take his Math, English in the PRIDE Program¹ and he will take Biology in the self-contained environment with the special educator with Pride supports” and that he will participate in both individual and group therapy with a psychologist. The IEP explains that the student requires services, including crisis intervention services, in the PRIDE Program due to “elopement, peer conflicts and emotional outbursts.” It states that the student “works best in a behavior management program,” which is “not easily provided for in the general education classroom setting” (Doc. a).
2. The progress reports developed at the XXXXXXXX on July 15, 2015 and August 26, 2015 reflect that the student received instruction from both general and special education teachers. A review of class attendance logs reflect that the student was also removed to a separate special education classroom for instruction from a special education teacher at the XXXX and that there were between four and ten students in the classroom in addition to the student (Review of class attendance sheets).

¹ The Promoting, Respect, Integrity, Discipline, and Excellence (P.R.I.D.E.) program is a BCPS program designed to address the needs of students who require intense behavior supports and therapy. Classes have a low pupil to staff ratio, and behavior supports are provided by a classroom teacher, social worker, psychologist, and other assigned staff (www.baltimorecityschools.org).

3. A review of the special education teacher's schedule at XXXXXX reflects that special education instruction was provided along with the student's general education teacher in the general education classroom in math and science. It reflects that the special education teacher also provided support in English, social studies, and science classes. The October 27, 2015 IEP documents that the student was provided with instruction in a small class setting with both general and special education teachers at XXXXXX (Doc. c and review of class attendance sheets).
4. The DJS implements a behavior management program, called the Challenge Program, in both the residential and educational settings within each facility. This is a program to assist youth in developing pro-social behavior and individual accountability and responsibility using a "token economy" and social skills education to incentivize positive behavior. In the educational setting, students earn points and receive rewards for positive behavior. If a student displays inappropriate classroom behavior, it is redirected with interventions in the classroom, which can be implemented by both DJS and JSE staff. If a student is in crisis and demonstrates escalating behavior in the classroom, the DJS staff provide supports to the student outside of the classroom, and return the student to the classroom once the student has calmed down and can access instruction (Doc. g).
Behavior Intervention Plan
6. An October 29, 2014 report of the student's progress towards achievement of the annual IEP goals, which is reflected on the October 28, 2014 BCPS IEP, states that revisions were made to the student's Behavior Intervention Plan (BIP) at that time in order to "accelerate improvement of his behavior and academic performance" (Doc. a).
7. The electronic on-line IEP system includes a BIP, which was developed by the BCPS on June 23, 2010, and was designed to address targeted behavior of impulsivity and aggression when the student becomes angered or frustrated. The BIP requires that the student be provided with modified work in language arts and social studies and be given frequent breaks in the classroom. It also requires that the student be seated apart from other students and prepped for lessons ahead of time, and that he be provided with tangible rewards for remaining seated for a designated period of time. However, the electronic on-line IEP system does not include the revisions made to the BIP in 2014 that are referenced in the progress report on the October 28, 2014 IEP (Review of the Maryland on-line IEP system).
8. The Special Education Folder Access Log contains a notation on June 26, 2015 that, "academic records received via fax." There is documentation that, on June 29, 2015, June 30, 2015, July 2, 2015, and July 7, 2015, the XXXX staff made written requests for additional documents from the student's educational record. The written requests made by the BCJJC staff were for specific documents, including any BIP that was in effect. However, no BIP was provided and the IEP team did not convene in order to determine whether the supports provided through the Challenge Program were sufficient to address

the student's behaviors in the classroom (Review of the Special Education Folder Access Log, June 29, 2015 and July 7, 2015 Requests for Records, and electronic mail messages forwarding the Requests for Records, dated June 29 and 30, 2015 and July 7, 2015).

Psychological Services

8. The IEP requires that the student be provided with thirty minutes of psychological services per week, and indicates that he will participate in both individual and group sessions (Doc. a).
9. The related services logs for psychological services reflect that the student was provided with both individual and group sessions of psychological services. However, they reflect that the student missed two sessions at the XXXX and two sessions at XXXX (Review of the psychological services logs).
10. The JSE has made arrangements with the XXXX staff for the student to be provided with the missed psychological services now that he is again placed at the facility (Review of a June 24, 2016 electronic mail correspondence from the JSE staff to the XXXXX staff).

Access to Core English Courses, Provision of a Six Hour School Day, and Maintenance of the Record

11. The BCPS IEP included goals for the student to improve his reading comprehension and written language skills (Doc. a).
12. 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. f).
13. The XXX completed Student Record Cards 7 (SR 7s) for both time periods in which the student was placed at the facility. A progress report, dated July 15, 2015 reflects that, at the BXXXX, the student was enrolled in English/language arts, math, science, social studies, and reading classes. The guidance counselor who completed the first SR 7, which reflects an entry date of June 12, 2015 and an exit date of July 17, 2015, inserted information about the student's grades in reading and math, but noted that there was "no teacher/class available" to provide information about the student's grade in English, science, and social studies. The guidance counselor who completed the first SR 7 is no longer with the JSE to provide clarification of the information (Docs. b and d).

14. A review of the DJS residential staff log book, which tracks the whereabouts of every student throughout each day, indicates that the student and other students in his residential unit were transported to school regularly during the student's first placement at the XXXX, in which there were nineteen school days (Review of the DJS residential staff log book).
15. The second SR 7 completed at the XXXX, which reflects an entry date of August 19, 2015 and an exit date of September 1, 2015, indicates that the student was enrolled in English 10, algebra II, biology, world history, and reading classes, and reports grades for all of the classes except for biology and world history (Doc. d).
16. A progress report, dated August 26, 2015 reflects that reading, math, and English teachers provided information about the student's grades and progress, but that the teachers in science and social studies noted that it was "too soon to make an accurate assessment." At the XXX, while math and English classes are held every school day, science and social studies classes are held on every other day. There were only nine school days during the student's second placement at the facility (Doc. b and review of the XXXXXX school schedule).
17. At XXXX, the student was enrolled in English 10, geometry, world history, biology and career research and development classes (Doc. c).
18. Samples of the student's work in his English class at XXXX document that the IEP goal to improve the student's reading skills was addressed at XXXXX (Review of samples of the student's work).
19. A review of the school schedules for the XXXXX and XXXXX reflects that there are six hours built into the school day. The JSE schools maintain daily entrance and exit logs for each teacher, as well as monthly staff attendance logs, which reflect the time periods when teachers are present at school. This information is monitored by the JSE to ensure appropriate staffing at the schools throughout the six hour school day (Review of school schedules, daily entrance and exit logs, and monthly staff attendance logs).

Program and Placement Decisions

20. On October 27, 2015, the BCPS IEP was reviewed and revised by the IEP team, including the student's mother, at XXXXXX. There were no documented concerns expressed by the student's mother. At the meeting, the team decided to continue goals for the student to improve self-management and personal responsibility. While the IEP team discussed that the student continued to have behavioral needs when he gets frustrated or upset, it documented that "most days his behavior is not a problem." Although the last progress reports that had been made by the BCPS on June 5, 2015

reflected that the student had not made sufficient progress to achieve the goals, they indicated that the student had not attended school enough to measure his progress on the goals. On November 15, 2015 and February 22, 2016, reports of the student's progress on these goals were made by the JSE, which reflected that he was making sufficient progress on them by that time (Doc. c).

21. At the October 27, 2015 IEP team meeting, the team determined that the student had increased his math problem solving skills from the beginning fifth grade to the eleventh grade level, which was determined based upon classroom-based assessments and teacher reports of the student's classroom performance. Previous progress reports made by the BCPS on March 25, 2015 and June 15, 2015 reflect that, when the student attended school, he made sufficient progress on his math goal (Docs. a and c).
22. The October 28, 2014 IEP included a goal for the student to solve problems when provided with algebra concepts to interpret/solve and calculate at the beginning of the eighth grade and beyond. On October 27, 2015, the goal was revised to require that the student use formulas to find the area, perimeter, and circumference of various geometric shapes, identify, compare, classify, and describe angles in relationship to another angle, and identify the question in the problem, which is consistent with the curriculum standards for geometry. The SR 7 and progress reports reflect that, at the time, the student had earned a "C" in algebra II and was enrolled in a geometry class (Docs. a, c, and d).
23. The October 28, 2014 IEP included a goal for the student to improve his reading comprehension skills by determining the meaning of words and phrases as they are used in texts, including figurative and connotative meanings, and analyzing the impact of specific word choices on meaning and tone. It required that the student use common, grade appropriate affixes and roots as clues to the meaning of words, to use evidence from literary text to support his analysis of word choices, and to interpret analogies and literary allusions as a way to construction meaning in a literary text (Doc. a).
24. The IEP revised on October 27, 2015 states that the student, who was in the tenth grade, and was pursuing a Maryland High School Diploma, continued to have an instructional grade level performance at the sixth grade in reading comprehension. However, the IEP team revised the reading comprehension goal on that date to require only that the student demonstrate understanding of text by identifying and explaining the main idea, whether or not directly stated in the reading material (Doc. c).
25. The curriculum standards for reading for the student's grade requires that the student:
(a) cite strong and thorough textual evidence to support analysis of what the text says explicitly as well as inferences drawn from the text; (b) determine a theme or central idea of a text and analyze in detail its development over the course of the text; and (c) analyze

how complex characters develop over the course of a text, interact with other characters, and advance the plot to develop the theme (<http://www.marylandpublicschools.org>).

26. The October 28, 2014 IEP included a goal for the student to write informative/explanatory texts to examine a topic and convey ideas, concepts, and information through the selection organization and analysis of relevant content. At the October 27, 2015 IEP team meeting, the team documented that the student's "spelling and grammar skills are low for his age," that he "demonstrates a limited understanding of punctuation/grammar rules," and that he continues to have an instructional grade level performance in written language at the beginning of the fifth grade. However, on October 27, 2015, the goal was revised to require only that the student compose texts using prewriting and drafting strategies by developing ideas that are appropriate to the topic (Doc. c).
27. The curriculum standards for writing for the student's grade require that the student:
(a) write arguments to support claims in an analysis of substantive topics or tests, using valid reasoning and relevant and sufficient evidence; (b) write informative/explanatory texts to examine and convey complex ideas, concepts, and information clearly and accurately through the effect selection, organization, and analysis of content; and (c) write narratives to develop real or imagined experiences or events using effective technique, well-chosen details, and well -structured event sequences (<http://www.marylandpublicschools.org>).
28. At the October 27, 2015 IEP team meeting, the IEP team decided that, based on the student's progress, the amount of special education instruction would be reduced to fifteen hours per week, and that the IEP could be successfully implemented in the general education classroom (Doc. c).
29. A Prior Written Notice document was generated following the October 27, 2015 IEP team meeting. While the document indicates that the annual goals were updated, Extended School Year (ESY) services were considered, transition planning was conducted, and the placement decision made, it does not reflect the decision to decrease the amount of special education instruction to be provided to the student (Doc. c).

DISCUSSION/CONCLUSIONS:

Allegations #1 and #10

Each public agency must ensure that students are provided with the special education and related services in the educational placement required by the IEP (34 CFR §§300.101 and .323 and COMAR 13A.05.11.06).

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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). "Comparable services" is 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 [emphasis added] (Analysis of Comments and Changes to the IDEA, *Federal Register*, Vol. 71, No. 156, p. 46681, August 14, 2006).

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 this case, the complainant alleges that the student was not provided with special education instruction from a special education teacher in a separate special education classroom using a program that is designed to address behavioral needs, and that he was not provided with the amount of individual and group psychological services from a psychologist, as required by the IEP. The complainant also alleges that the student was not provided with the services of a BIP (Doc. e).

Based on the Findings of Facts #1 - #4, the MSDE finds that the student was provided with special education instruction from a special education teacher through a program designed to address social, emotional, and behavioral needs at the XXXX and XXX, as required by the IEP.

However, based on the Finding of Fact #3, the MSDE finds that the student was not provided with special education instruction in the placement required by the IEP at XXXXX from September 1, 2015 to October 27, 2015, and that a violation occurred regarding this aspect of Allegations #10.

Notwithstanding the violation, the MSDE already required that the JSE take steps by February 1, 2016 to ensure that sufficient staff is assigned if a student is placed at XXXXX who requires special education instruction in a separate special education classroom through the investigation of an unrelated complaint (State complaint #15-083). Therefore, no additional school-based corrective action is required with respect to the violation.

Based on the Findings of Facts #5 - #7, the MSDE finds that the BIP was not implemented at the XXXXX or XXXXX because, while the BIP was requested by the JSE staff, it was not provided. Based on those Findings of Facts, the MSDE finds that there is no documentation of what the BIP required, and no documentation that the IEP team determined whether the behavior supports provided through the Challenge Program were sufficient to address the student's needs.

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Therefore, this office finds that a violation occurred with respect to these aspects of Allegations #1 and #10.

Based on the Findings of Facts #8 and #9, the MSDE finds that the student was not provided with the required amount of psychological services at the XXXXX or XXXX and that violations occurred with respect to these aspects of Allegations #1 and #10. Notwithstanding the violations, based on the Finding of Fact #10, the MSDE finds that the JSE is taking steps to make up the missed psychological services. Therefore, no additional corrective action is required with respect to these violations.

Allegations #2 and #3

The IDEA requires that a FAPE be provided to students with disabilities through an IEP that meets the needs that result from the disability and enables them to be involved in and make progress in the general curriculum (34 CFR §§300.101, .103, .320, and .323). Therefore, the JSE must ensure that students in each DJS facility have access to instruction to allow them to achieve credit requirements and assessments necessary to progress towards the State standards for graduation from a public high school (COMAR 13A.05.11.03).

To be awarded a Maryland High School Diploma, a student must have earned a minimum of twenty-one credits, including core credits in English, fine arts, mathematics, physical education, health education, science, social studies, and technology education. Core credits must also be earned in world language or American Sign Language, and in advanced technology education or a career and technology program (COMAR 13A.03.02.03).

The term “credit” means the successful demonstration of a specified unit of study (COMAR 13A.03.02.02). Credit instruction must meet the aggregate time requirements specified by each local school system (COMAR 13A.03.02.04).

In order to provide students with sufficient time to meet these requirements, the JSE must ensure that its schools operate at least 220 school days per year and a minimum of 1,320 school hours during a twelve month period. The JSE is required to have a written schedule for each school that states that the beginning and end of the 6-hour school day and the specific time periods during the 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 access to instruction in a core English course that he needed in order to progress through the general curriculum while placed at the XXXXX and that he was not provided with special education instruction to address the reading goal at XXXXXX because he did not receive instruction in a reading course at that facility (Doc. e).

Based on the Findings of Facts #11 - #16, the MSDE finds that there is documentation that the student was provided with access to instruction in an English class at the XXXXX. Based on the

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Findings of Facts #12, #17, and #18, the MSDE finds that, while the student was enrolled in an additional reading course at the XXXXX, which he did not take at XXXXX, he was provided with instruction in a core English course at XXXX in which the goal to improve his reading comprehension was addressed. Therefore, this office does not find that a violation occurred with respect to this aspect of Allegation #2.

The complainant also alleges that the student was not provided with a six hour school day at the XXXXX, which was needed in order for him to take the core courses necessary to progress through the general curriculum. The basis for the allegation is that the student was not assigned grades for two of the classes in which he was enrolled in the BCJJC and the progress reports from the XXXXX do not include information from all of the courses in which he was enrolled (Doc. e).

Based on the Findings of Facts #13 - #16, and #19, the MSDE finds the documentation does not support the allegation. Therefore, no violation is identified with respect to Allegation #3.

Allegation #5

As stated above, the JSE is required to implement procedures to obtain, maintain, and share student records in order to ensure that appropriate services are provided to each student (COMAR 13A.05.11.09).

In this case, the complainant alleges that the JSE did not maintain an accurate record of the student's participation in the education program at the BCJJC because an SR 7 reflects that the student began participating in the program on August 19, 2015, and there are progress reports that reflect that he began participating in the program on June 10, 2015 (Doc. e).

Based on the Findings of Facts, #13, #15, and #16, the MSDE finds that there are two SR 7s, one for each of the student's placements at the XXXXX, and that the one SR 7 used as a basis for the allegation is for a different time period than the progress report used as a basis for the allegation.

However, based on the Finding of Fact #13, the MSDE finds that the SR 7 for the period between June 12, 2015 and July 17, 2015 did not include required information about the student's grades in all of his classes. Therefore, this office finds that a violation occurred with respect to the allegation.

Allegation #6

The public agency must offer each student with a disability a FAPE through an IEP that includes measurable annual goals and special education and related services that address the student's identified needs. In identifying the student's needs, the public agency must ensure that the IEP team considers the strengths of the student, the concerns of the parents for enhancing the

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education of the student, the results of the most recent evaluation, and the academic, developmental, and functional needs of the student (34 CFR §§300.101, .320 and .324).

The IEP goals must be 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 [Emphasis added](34 CFR §300.320).

The United States Department of Education (USDOE) has explained that the annual goals must be aligned with the State's academic content standards for the grade in which the student is enrolled, and take into account a student's present levels of academic achievement and functional performance [Emphasis added]. In a situation in which a student is performing significantly below the level of the grade in which the student is enrolled, the USDOE explained that the IEP team should determine annual goals that are ambitious but achievable, and ensure that the IEP includes specially designed instruction, which will allow the student to meet the education standards within the jurisdiction of the public agency that apply to all students (34 CFR §300.39 and *USDOE Dear Colleague Letter*, dated November 16, 2015 and Analysis of Comments and Changes to the IDEA, *Federal Register*, Vol. 71, No. 156, August 14, 2006, p. 46662).

In this case, the complainant alleges that the annual goals were not based on the student's needs because the school staff did not have sufficient data to determine the student's levels of performance, and therefore, the goals were not designed to assist the student in progressing through the general curriculum (Doc. e).

Based on the Findings of Facts #20 - #26, the MSDE finds that the IEP team considered the required data and identified the student's needs consistent with the data. Based on the Findings of Facts #21 and #23, the MSDE also finds that the math goal was based on the information from the data and aligned with the course content required by the general curriculum.

However, based on the Findings of Facts #23 - #27, the MSDE finds that, while the reading and written language goals were revised to address the student's lack of progress, they are not aligned with the course content required by the general curriculum. Therefore, this office finds that a violation occurred with respect to the reading and written language goals.

Allegation #7

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).

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In this case, the complainant alleges that the JSE did not ensure that the IEP team reviewed and revised the IEP, as appropriate to address lack of expected progress on the behavioral goals (Doc. e).

Based on the Finding of Fact #20, the MSDE finds that, while the student had not made progress on the behavioral goals when the IEP team decided to continue those goals on October 27, 2015, it was noted that this was impacted by the student's lack of regular school attendance while he was enrolled in a school in the community. Based on this Finding of Fact, the MSDE further finds that there was information that the student's behavior had been appropriate on most days while he was placed at XXXXX, and thus, there was data to support the continuation of the goals without revision.

Furthermore, based on the Finding of Fact #20, the MSDE finds that the student's progress on the goals following the October 27, 2015 IEP team meeting was sufficient, and thus, there was no requirement to revise the goals. Therefore, this office does not find that a violation occurred with respect to the allegation.

Allegation #8

Educational placements must be individually determined on the basis of each student's abilities and needs and each student's IEP. Decisions may not be made solely on factors such as category of disability, severity of disability, availability of special education and related services, configuration of service delivery system, availability of space, or administrative convenience (*Analysis of Comments and Changes to the IDEA*, Federal Register, Vol. 71, No. 156, p. 46588, August 14, 2006).

The United States Department of Education, Office of Special Education Programs (OSEP), requires that, during the investigation of an allegation that a student has not been provided with an appropriate educational program under the IDEA, the State Educational Agency (SEA) review the procedures that were followed to reach determinations about the program. The SEA must also review the evaluation data to determine if decisions made by the IEP team are consistent with the data (OSEP Letter #00-20, July 17, 2000 and *Analysis of Comments and Changes to the IDEA*, Federal Register, Vol. 71, No. 156, p.46601, August 14, 2006).

In this case, the complainant alleges that the educational placement decision that was made on October 27, 2015 was not based on the student's needs (Doc. e).

Based on the Findings of Facts #24, #26, and #28, the MSDE finds that the basis given for the IEP team's change in educational placement (the progress made by the student) is not consistent with the documented lack of progress the student made in the general curriculum in the areas of reading and written language. Therefore, this office finds that the decision was not consistent with the data, and that a violation occurred with respect to the allegation.

Allegation #9

Written notice must be provided to parents within a reasonable time before the public agency proposes or refuses to initiate or change the identification, evaluation, or educational placement of students or the provision of a FAPE to students. This notice must include information about the decisions made, the basis for the decisions, the data used when making the decisions, and the options considered by the team (34 CFR §300.503). The purpose of providing prior written notice is to ensure that parents have sufficient information in order to determine whether they wish to exercise their right to access the dispute resolution procedures if they disagree with the IEP team's decisions.

Based on the Findings of Facts #28 and #29, the MSDE finds that the written notice of the decisions made by the IEP team on October 27, 2015 did not include information about all of the decisions made by the team. Therefore, this office finds that a violation occurred with respect to the allegation.

**ALLEGATIONS #4 AND #12 PROVISION OF SPECIAL EDUCATION
INSTRUCTION FROM TEACHERS WHO ARE
CERTIFIED IN THE AREAS TAUGHT AT THE
XXXXX AND XXXXXXXX**

FINDINGS OF FACTS:

30. While placed at the XXXX, the student was provided with special education instruction by teachers who held certification in each area of instruction (Review of staffing documents).
31. While placed atXXXXX, the student was provided with special education instruction in math by a teacher who held certification in the area of instruction provided. While the student's teachers did not hold certification in English, science, social studies, there is documentation of collaborative planning with certified teachers and observations conducted by the school principal during the time period that the student was placed at the facility (Review of staffing documents).

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).

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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, oversight of the teacher will be provided through collaborative planning with a certified teacher and observations of the non-certified teacher conducted by the school principal (Doc.).

In this case, the complainant alleges that the oversight of non-certified teachers has not occurred (Doc. e).

Based on the Findings of Facts #30 and #31, the MSDE finds that the documentation does not support the allegations. Therefore, a violation is not found with respect to the allegations.

**ALLEGATION #11 OPPORTUNITY TO EARN SERVICE LEARNING HOURS
AT XXXXXXXX**

FINDINGS OF FACTS:

32. 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>).
33. 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 XXXXXXXX, from January 2016 to July 2016 involves participation in a worldwide initiative to knit/crochet blankets for the less fortunate (<http://marylandpublicschools.org>).

DISCUSSION/CONCLUSIONS:

To be awarded a Maryland High School Diploma, a student must also have completed either seventy-five hours of student service that includes preparation, action, and reflection components, or a locally designed program in student service that has been approved by the State Superintendent of Schools (COMAR 13A.03.02.05).

In this case, the complainant alleges that XXXXX does not provide opportunities for students to earn service learning hours (Doc. e).

Based on the Findings of Facts #32 and #33, the MSDE finds that the documentation does not support the allegation, and does not find that a violation occurred with respect to the allegation.

CORRECTIVE ACTIONS/TIMELINES:

Student-Specific

The MSDE requires that the JSE provide documentation by September 30, 2016 that the IEP team has taken the following actions:

1. Determined whether the student's behavioral needs can be addressed through the provision of current supports, and if not, has obtained the necessary data and reviewed and revised the IEP to address the student's behavioral needs in the classroom based on the data;
2. Reviewed and revised the IEP to ensure that the reading and written language goals are aligned with the grade level curriculum and has determined the educational placement consistent with the data;
3. Determined whether the violation related to implementation of the BIP had a negative impact on the student's ability to benefit from his education program, and if so, determine the compensatory services or other remedy for the violation; and
4. Determined the compensatory services or other remedy for the violations related to the lack of appropriate reading and written language goals and the provision of special education instruction in the educational placement 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 bridge the achievement gaps and to build on skills deficits to assist the student in obtaining a Maryland High School Diploma or a Maryland High School Diploma by Examination.

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The JSE must further provide documentation that proper prior written notice of the IEP team's decisions has been provided to the student's parent.

School-Based - XXXXXX

The MSDE requires the JSE to provide documentation by November 1, 2016 of the steps it has taken to determine if the violation related to lack of appropriate documentation on the student's grades in all classes is unique to this case or if it represents a pattern of noncompliance at the XXXX. Specifically, a review of student records, data, or other relevant information must be conducted in order to determine if the regulatory requirements are being implemented and documentation of the results of this review must be provided to the MSDE. If compliance with the requirements is reported, the MSDE staff will verify compliance with the determinations found in the initial report.

If the regulatory requirements are not being implemented, actions to be taken in order to ensure that the violation does not recur must be identified, and a follow-up report to document correction must be submitted within ninety (90) days of the initial date of a determination of non-compliance. Upon receipt of this report, the MSDE will re-verify the data to ensure continued compliance with the regulatory requirements.

School-Based - XXXXXX

The MSDE requires that the JSE provide documentation by November 1, 2016 of the steps taken to ensure that the XXXXX school staff comply with the requirements related to the following:

- a. Development of annual goals that are aligned with the State's academic content standards for the grade in which each student is enrolled; and
- b. Provision of proper prior written notice that includes information about every action proposed or rejected by the IEP team.

School-Based – XXXXX and XXXXX

The MSDE further requires the JSE to provide documentation by November 1, 2016 of the steps taken to ensure that the XXXXX and XXX school staff comply with the requirements to ensure that the IEP team addresses each student's behavioral needs when there is documentation that the student has a BIP that is not provided in response to a request for records.

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.

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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 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:	Kyree Strong	XXXXXX	Alan Dunklow
	Lynne Gilli	Dori Wilson	
	Crystal Fleming-Brice	Nancy Birenbaum	
	Anna Lisa Nelson	Anita Mandis	
	Dawn Hubbard	Elizabeth Kameen	
	XXXXXX	Elliott L. Schoen	