



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

August 2, 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: #16-130

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 16, 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 special education instruction to assist him with achieving goals to improve reading skills and to progress through the general curriculum, as required by the IEP, while he was placed by the Maryland Department of Juvenile Services (DJS) at the XXXXXXXXXXXXXXXXXXXXXXX

(XXXXXX) from August 11, 2015 to December 1, 2015 and while he was placed by the DJS at the XXXXXXXXXXXXXXXXXXXX (XXXXXX) from December 1, 2015 to March 1, 2016, in accordance with 34 CFR §§300.101 and .323.

2. The JSE did not ensure that the student was provided with the opportunity to complete courses that he had begun taking and did not ensure that he was enrolled in courses for which he had not earned credit, in order to allow him to work to achieve credit requirements necessary to progress towards the standards for graduation while he was placed by the DJS at the XXXXX from August 11, 2015 to December 1, 2015 and while he was placed by the DJS at the XXXX from December 1, 2015 to March 1, 2016, in accordance with 34 CFR §§300.101, .149, and COMAR 13A.03.02 and 13A.05.11.
3. The JSE did not ensure that the student's educational record was maintained while he was placed by the DJS at the XXXXXXXXXXXXXXXXXXXX (XXXXXX), XXXXXX, and XXXX from June, 2015 to March 24, 2016, in accordance with COMAR 13A.05.11 and 13A.08.02.
4. The JSE did not ensure that the addition of related counseling services to the IEP that was made while the student was placed by the DJS at XXXXXXXXX from March 1, 2016 to March 24, 2016 was made either by the IEP team or through an amendment that was agreed upon by the student's parent and the school staff, in accordance with 34 CFR §300.324.
5. 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 XXXXXXXX, XXXXXX, and XXXXXX from June 2015 to March 24, 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 17, 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, 2015, Ms. Anita Mandis, Section Chief, Complaint Investigation Section, MSDE, requested documents from the JSE.
3. On July 5, 2015, 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 April 24, 2015;
 - b. Report of the student's progress towards achievement of the reading goal, dated September 4, 2015;
 - c. Report of the student's progress towards achievement of the reading goal, dated February 19, 2016;
 - d. Correspondence from the complainant alleging violations of the IDEA, received by the MSDE on May 16, 2016; and
 - e. 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 a Specific Learning Disability under the IDEA and has an IEP that requires the provision of special education instruction (Doc. a).

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

- From May 29, 2015 to June 17, 2015, the Maryland State Department of Juvenile Services (DJS) placed the student at XXXXXXXXXX, where he participated in the JSE program for twelve days from June 2, 2015 to June 17, 2015;
- From June 17, 2015 to July 12, 2015, the DJS placed the student in the community;
- From July 12, 2015 to August 11, 2015, the DJS placed the student at XXXXXXXX again, where he participated in the JSE program for fifteen days from July 20, 2015 to August 11, 2015;
- From August 11, 2015 to October 8, 2015, the DJS placed the student at XXXXXX, where he participated in the JSE program for thirty-five days;
- From October 8, 2015 to October 9, 2015, the DJS placed the student at the XXXXXXXXXXXXXXXXXXXX;
- From October 9, 2015 to October 26, 2015, the DJS placed the student at XXXXXXXX, where he participated in the JSE program for eight days from October 13, 2015 to October 26, 2015;

- From October 26, 2015 to November 8, 2015, the DJS placed the student at XXXXX, where he participated in the JSE program for eight and one-half days from October 27, 2015 to November 8, 2015;
- From November 8, 2015 to November 9, 2015, the DJS again placed the student at the XXXXXXXXXXXXXXXXXXXXXXXX;
- From November 9, 2015 to November 30, 2015, the DJS placed the student at XXXXXXXX, where he participated in the JSE program for nine days from November 9, 2015 to November 30, 2015;
- From November 30, 2015 to February 29, 2016, the DJS placed the student at XXXXX, where he participated in the JSE program for forty-six days from December 1, 2015 to February 29, 2016;
- From February 29, 2016 to March 1, 2016, the DJS again placed the student at the XXXXXXXXXXXXXXXXXXXXXXXX;
- From March 1, 2016 to March 24, 2016, the DJS placed the student at XXXXXXXX, where he participated in the JSE program for thirteen days from March 7, 2016 to March 24, 2016; and
- On March 24, 2016, the DJS placed the student back into the community (Review of the DJS Placement Summary, Student Record Card 7s [SR 7s], and Student Record Card 3s [SR 3s]).

ALLEGATION #1 PROVISION OF SPECIAL EDUCATION INSTRUCTION ON THE READING GOAL

FINDINGS OF FACTS:

1. When the student participated in the JSE program at XXXXXX in June, 2015, he had an IEP that was developed by the Baltimore City Public Schools (BCPS) on April 24, 2015 (BCPS IEP). The BCPS IEP states that the student was performing in the upper fifth grade level in reading comprehension. It requires the provision of special education instruction to assist him with achieving a goal to improve his reading comprehension by determining what text says explicitly and making logical inferences from it, answering questions about the main ideas, supporting details, and character/event interactions at the upper sixth grade level. The IEP states that the student was expected to achieve the goals by April 23, 2016 (Doc. a).
2. The student was enrolled in both English and reading courses while participating in the JSE program at XXXXXXXXXXXX (Review of SR 7s).

3. 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 (Review of the *JSE Program of Studies, Course Offerings and Descriptions*, July, 2014).
4. The SR 7s for the periods of time that the student participated in the JSE program at XXXX reflect that he was enrolled in an English class, but not a reading class, at the facility (Review of SR 7s).
5. On September 4, 2015, a report was made on the student's progress towards achievement of the reading goal while he was placed at XXXXX. The report states that the student is making sufficient progress to meet the goal (Doc. b).
6. 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).
7. The SR 7 for the period of time that the student participated in the JSE program at XXXX reflects that he was enrolled in an English class, but not a reading class, at that facility (Review of SR 7s).
8. On February 19, 2016, a report was made on the student's progress towards achievement of the reading goal while he was placed at XXXXX. The report states that the student is making sufficient progress to meet the goal (Doc. c).
9. Samples of the student's work in his English class at XXXXX document that the IEP goal to improve the student's reading skills was addressed at XXXX (Review of samples of the student's work).

DISCUSSION/CONCLUSIONS:

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 the student was not provided with special education instruction to assist him with addressing the reading goal on the IEP at XXXXX and XXXX because he was not enrolled in a reading course at those facilities (Doc. d).

Based on the Findings of Facts #1 - #9, the MSDE finds that the documentation does not support the allegation. Therefore, no violation is identified with respect to the allegation.

ALLEGATIONS #2 AND #3

**PROVISION OF COURSES TO ENABLE THE
STUDENT TO PROGRESS THROUGH THE
GENERAL CURRICULUM AND MAINTENANCE
OF THE RECORD**

FINDINGS OF FACTS:

10. The student's educational record includes an SR 7 reflecting the student's participation in the JSE program at XXXXXXXX for the following periods of time:
- June 2, 2015 to June 17, 2015;
 - July 20, 2015 to August 11, 2015;
 - October 13, 2015 to October 26, 2015;
 - November 9, 2015 to November 30, 2015; and
 - March 7, 2016 to March 24, 2016.

Another SR 7 was completed in error indicating that the student participated in the JSE program at that facility from October 13, 2015 to November 17, 2015, which includes a period of time when the student was participating in the JSE program at XXXX. It has been noted in the student's educational record that this SR 7 is inaccurate (Review of SR 7s and DJS Placement Summary).

11. The student's educational record also includes an SR 3 that erroneously reflects that the student participated in the JSE program at XXXXX during that time period that he was placed at XXXXX during the 2015-2016 school year. The SR 3 has been revised to accurately reflect the student's placement at XXXX (Review of SR 3s and SR 7s and the June 23, 2016 facsimile cover sheet forwarding the corrected SR 3 to the school staff).
12. The JSE requires that, when a student transfers into the JSE program, requests for student educational records be made to all facilities in which the student was previously placed, and not just the last facility (Review of *JSE Student Records Procedures Manual*, September 2015).
13. While the student was placed at XXXXXXX in November, 2015, he was not enrolled in the English and math classes that he was taking at XXXXXXX despite the fact that the school staff at XXXXXXX provided accurate records of the courses he was taking. As a result, the student was placed in courses at XXXXXXX that he had already completed (Review of SR 7s and June 22, 2016 correspondence from the JSE staff to the school staff at the DJS facilities).

14. When the student was transferred from XXXXXXXXX to XXXX on November 30, 2015, the records of the courses he was taking at XXXXXXXXX were provided to the school staff at XXXX. Because the school staff at XXXX did not request the record from XXXXXXX, in accordance with the JSE procedure, they continued the student in the inappropriate English and math classes at XXXX (Review of SR 7s and June 22, 2016 correspondence from the JSE staff to the school staff at the DJS facilities).
15. The JSE has subsequently re-distributed its *JSE Student Records Procedures Manual* (the Manual) to all JSE school staff emphasizing the need to follow these procedures and informing them that the lack of following the established procedure in this case resulted in the student being assigned to inappropriate courses at two facilities. The correspondence from the JSE staff to the school staff indicates that the Manual had previously been reviewed with them during professional development, and that correspondence forwards to the school staff another request for records checklist that they should be using to ensure that the procedures are followed (Review of June 22, 2016 email from the JSE staff to the school staff at the DJS facilities).
16. At the time that the student was placed at XXXXXXX, he had already earned one-half of a credit in world history while attending a school in the community. At XXXXX, the student continued to take world history. While progress reports reflect that the student performed well in his world history class at XXXXX, there is no documentation that he was able to complete the coursework required to earn the remaining one-half of a credit while placed at XXXXXXX. The student continued to take world history while placed at XXX, where he earned the remaining one-half of a credit (Review of the SR 3s, SR 7s, and progress reports).
17. At XXXXX, the student was provided with instruction in English and math every day, and in science and social studies every other day. The student was able to earn one-half of a credit in English, math, and science while placed at XXXXXXX(Review of SR 3 and SR 7s).

DISCUSSION/CONCLUSIONS:

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 21 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).

Grace Reusing, Esq
Ms. S. Beth Hart
August 2, 2016
Page 8

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 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).

In this case, the complainant alleges that the JSE did not ensure that an SR 7 was generated to reflect the student’s participation in the JSE program at XXXXXXXXXX from June 2015 to August 2015 and in March 2016. The complainant also alleges that the JSE did not ensure that accurate records were maintained of the courses in which the student had already received credit, which resulted in his being required to retake courses he did not need to take. The complainant specifically alleges that the student was required to take a world history course at XXXX, which had previously been earned at XXXXX, and that he was required to take math and English classes at XXXXX for which he already earned credit (Doc. d).

Based on the Finding of Fact #10, the documentation does not support the allegation that SR 7s were not generated for the student’s participation in the JSE program at XXXXXXXX. Therefore, a violation is not found with respect to this aspect of Allegation #3.

Based on the Findings of Facts #16 and #17, the MSDE finds that there is no documentation that the student earned the remaining one-half of a credit in world history at XXXX. Therefore, this office does not find that the student was required to complete a course at XXXX for which he had already earned credit, and does not find that a violation occurred with respect to this aspect of the allegations.

However, based on the Findings of Facts #12 - #14, the MSDE finds that the student was not able to continue to take core English and math courses at XXXXXXXXX and XXXX because his educational record was not accurately maintained at XXXXXXXX, and because the school staff at XXXXXX did not request the record from XXXXXX, in accordance with the JSE procedures. Therefore, this office finds that violations occurred with respect to Allegations #2 and #3.

In addition, based on the Findings of Facts #10 and #11, the MSDE finds that the JSE did not ensure that the SR 3 completed at XXX and the SR 7 completed at XXXXXXXX contained accurate information about the dates of the student's participation in the JSE programs at those facilities, and that a violation occurred.

Notwithstanding the violations, based on the Findings of Facts #10, #11, and #15, the MSDE finds that the JSE has taken steps to correct the student's educational record and to ensure the future compliance with the requirements. Therefore, no school-based corrective action is required with respect to these violations.

ALLEGATION #4 REVISION OF THE IEP AT XXXXXXXXXXXX

FINDINGS OF FACTS:

18. The provider log maintained by the school psychologist at XXXXXXXX reflects that he worked with the student on March 9, 10, and 14, 2016. However, the IEP does not require counseling as a related service and there is no documentation that a decision has been made that the student requires this service (Review of service provider logs and IEP).
19. As part of the DJS behavior management program within each facility, students who display inappropriate classroom behavior receive supports from both the DJS and the JSE staff. Therefore, counseling services are not provided exclusively to students whose IEPs require it as a related service (Doc. e).

DISCUSSION/CONCLUSIONS:

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).

In this case, the complainant alleges that the IEP was revised at XXXXXXXXXXXX to include counseling services without agreement of the parent and without convening an IEP team (Doc. d).

Based on the Findings of Facts #18 and #19, the MSDE finds that there is no documentation that the counseling service provided to the student at XXXXXX were intended as related services or that a decision has been made that the student requires counseling as a related service. Therefore, this office does not find that the IEP was revised at XXXXXXXX, and does not find that a violation occurred with respect to the allegation.

**ALLEGATION #5 PROVISION OF SPECIAL EDUCATION INSTRUCTION
FROM TEACHERS WHO ARE CERTIFIED IN THE
AREAS TAUGHT AT XXXXXXXXXX, XXXXXXX, AND
XXXXXX**

FINDINGS OF FACTS:

XXXXXXXXXXXX

20. The student was provided with special education instruction in social studies at XXXXXX by a teacher who held certification in the area of instruction (Review of staffing documents).
21. While there is currently a teacher at XXXXXXXX who holds certification in math, the student was provided with special education instruction in math at XXXXXXXX by a teacher who did not hold certification in the area of instruction during the time period between June 2, 2015 and March 24, 2016. However, there is documentation of collaboration with teachers who did hold certification in these areas and that classroom observations were conducted by the principal (Review of staffing documents).
22. The student was provided with special education instruction in English at XXXXXXXX by a teacher who did not hold certification in the area of instruction during the time period between June 2, 2015 and October 26, 2015. However, there is documentation of collaboration with teachers who did hold certification in these areas and that classroom observations were conducted by the principal (Review of staffing documents).
23. During the time period between October 26, 2015 and March 17, 2016, the student was provided with instruction in English by a librarian due to a staff vacancy, which is now filled. However, there is no documentation of oversight of the librarian consistent with the JSE procedures (Review of staffing documents).
24. The student was provided with special education instruction in science at XXXXXXXX by a teacher who held certification in the area of instruction during the placements at that facility between June 2, 2015 and October 26, 2015. During the placements at that facility between November 9, 2015 and March 24, 2015, the student was provided with instruction in science by an instructional assistant due to a staff vacancy, which is now filled. However, there is no documentation of oversight of the instructional assistant, in accordance with the JSE's procedures (Review of staffing documents).

XXXXXX

25. The student was provided with special education instruction in English and science at XXXXXX by teachers who held certification in the areas of instruction (Review of staffing documents).
26. The student was provided with special education instruction in math at XXXXXX by a teacher who did not hold certification in the area of instruction. However, there is documentation of oversight of the teacher consistent with the JSE procedures (Review of staffing documents).

XXXXXX

27. The student was provided with special education instruction in math at XXXXXX by a teacher who held certification in the area of instruction (Review of staffing documents).
28. The student was provided with special education instruction in English, social studies, and science at XXXXXX by teachers who did not hold certification in the areas of instruction provided. However, there is documentation of collaboration with teachers who did hold certification in these areas and that classroom observations were conducted by the principal (Review of staffing documents).

DISCUSSION/CONCLUSIONS:

The IDEA requires that the SEA 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. These qualifications must be designed to ensure that highly qualified personnel provide special education and related services to 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 highly 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, oversight of the

Grace Reusing, Esq
Ms. S. Beth Hart
August 2, 2016
Page 12

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 asserts that 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, and alleges that these procedures are not being implemented (Doc. d).

Based on the Findings of Facts #20 - #28, the MSDE finds that, while oversight of non-certified staff was provided at XXXXXX and XXXX consistent with the JSE procedures, the JSE did not ensure oversight of staff who were providing instruction while vacancies were being filled at XXXXXX. Therefore, this office finds that a violation occurred at XXXXXXXXX with respect to the allegation.

CORRECTIVE ACTIONS/TIMELINE:

Student-Specific

The MSDE requires that the JSE provide documentation by November 1, 2016 that the IEP team has determined the compensatory services or other remedy for the loss of access to core English and math courses at XXXXXXXX and XXXXX. 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.

School-Based - XXXXXXXXXX

The MSDE requires that the JSE provide documentation by November 1, 2016 of the steps taken to ensure that the XXXXXXXX school staff comply with the requirements for oversight of staff who provide instruction in areas in which they do not hold certification.

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.

Grace Reusing, Esq
Ms. S. Beth Hart
August 2, 2016
Page 13

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 Free Appropriate Public Education (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: XXXXXXXXX
 Karen Salmon
 Crystal Fleming-Brice
 Anna Lisa Nelson
 Dawn Hubbard
 XXXXXXXXX
 Dori Wilson
 Anita Mandis
 Nancy Birenbaum
 Elizabeth Kameen
 Elliott L. Schoen
 Alan Dunklow