



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

June 18, 2018

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

Ms. Deborah Grinnage-Pulley
Executive Director, Juvenile Services Education System
Maryland State Department of Education
200 West Baltimore Street
Baltimore, Maryland 21201

RE: XXXX and
Similarly-Situated Students
at the XXXXXXXXXXXXXXXX
Reference: #18-142

Dear Parties:

The Maryland State Department of Education, Division of Special Education/Early Intervention Services (MSDE, DSE/EIS), has completed the investigation of the complaint regarding special education services for the above-referenced student. This correspondence is the report of the final results of the investigation.

ALLEGATIONS:

On April 19, 2018, the MSDE received a complaint from Grace Reusing, Esq., Office of the Public Defender, hereafter “the complainant,” on behalf of the above-referenced student and similarly-situated students at the XXXXXXXXXXXXXXXX. In that correspondence, the complainant alleged that the Maryland State Department of Education Juvenile Services Education System (JSES) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to the above-referenced students.

The MSDE investigated the following allegations:

1. The JSES has not ensured that the students have been provided with the special education instruction required by their respective Individualized Education Programs (IEPs) by teachers who meet the State requirements for content knowledge and skills to serve students with disabilities since being placed at the XXX XXXXXXXX (XXX), in accordance with 34 CFR §§300.101, .156, .323, and COMAR 13A.05.11 and 13A.12.01 and .02. Specifically, it is alleged that:
 - a. The students are required to complete assignments independently without the provision of direct special education instruction;¹
 - b. The teacher who is assigned to provide the special education instruction does not hold a professional certificate in the areas of “major assignment;” and
 - c. The teacher who is assigned to provide the special education instruction is assigned to teach more than two classes outside of her area of certification without having earned the required semester hours toward certification in the “out-of-area assignments.”
2. The JSES has not ensured that the students have consistently been provided with the related services required by their respective IEPs since being placed at the XXX in accordance with 34 CFR §§300.101 and .323.

BACKGROUND:

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

The named student was placed by the Maryland Department of Juvenile Services (DJS) at the XXX from January 5, 2018 to June 6, 2018, when he was returned to the community.

FINDINGS OF FACTS:

1. The IEP in effect since the named student has been placed at the XXX was developed on October 12, 2017 while the student was placed by the DJS at the XXXXXXXXXXXX XXXXXXXX (XXXXXX). The documentation of the October 12, 2017 IEP team meeting states that the student, who is in the 10th grade, is performing “at least five years below his current grade level in his reading comprehension, math calculation, and written language expression skills.” It reflects that the team discussed that this may be attributed

¹ This includes time periods when school is held both in the classroom and on the housing unit.

to a history of missing school and refusing to participate in instruction. The documentation also states that the student “has difficulty with his social emotional behavior and his emotional irregularity has adversely impacted his access to and progress in the general education curriculum, across curricula areas.” It further states that the student has “borderline cognitive skills which may also impact his ability to retain and process grade level curricula concepts independently.”

2. The October 12, 2017 IEP requires the provision of special education instruction in a separate special education classroom in all academic areas by a special education teacher, a general education teacher, or an instructional assistant. It also requires that the student be provided with thirty (30) minutes of counseling two (2) times per month from a psychologist, guidance counselor, or school social worker in either individual or group settings.
3. The special education instruction and related services are to be provided to assist the named student in achieving goals to do the following by October 11, 2018:
 - a. Summarize and paraphrase structures in informational and literary texts, including relationships among concepts and details to demonstrate understanding of the text from the early 5th grade level to at least the mid 6th grade level. This is to be done through the use of graphic organizers to assist the student to identify areas of focus, make connections and structure thinking. It is also to be done through the use of highlighting or annotation of keywords and phrases and context clues to determine the meaning of text.
 - b. Improve math calculation skills from the mid 4th grade level to at least the late 5th grade level using addition, subtraction, multiplication or division when given multistep practical problems with whole numbers, fractions, or decimals. This is to be done through the use of manipulatives, paper and pencil algorithms, and calculators to solve problems, and ability to explain how the answers to problems were obtained.
 - c. Improve expressive writing skills from mid 4th grade to late 5th grade when provided with graphic organizers, pictures and symbols. This is to be done by generating topics or ideas for writing that support the development of a summary, organizing ideas into a beginning, middle, and concluding statement, and using appropriate grammar, mechanics, spelling, sentence, and paragraph structures.
 - d. Demonstrate increased behavioral and academic performance by replacing noncompliant and task avoidant behaviors with cooperative and task-engaging behaviors. This is to be done by following class rules when requesting assistance, complying with class and school codes of conduct, seeking attention at the appropriate time given the rules and routines expected for situations, and using appropriate voice tone, volume, and words when given instruction on the rules.

- e. Increase positive interactions with adults given adult support, modeling, and instruction as measured by teacher and counselor observation and notes. This is to be done by identifying negative behaviors and consequences for those behaviors, and identifying and demonstrating positive, pro-social interaction skills.
4. The October 12, 2017 IEP and written summary of the meeting document that the student's mother stated that she has been asking for one-to-one support for the student in his community-based school for several years and that she believes that he would do better with such support. The student's history teacher, who served as the IEP case manager, stated that the student "does well with close proximity with the teacher in one-to-one support, like when he was in the infirmary for three months working with a special educator and instructional assistant." The IEP team discussed that the progress made by the student towards mastery of the annual IEP goals "may be attributed to the opportunities that he has had to receive both individualized support and small group instruction." The IEP states the following:

The IEP team determined that in order to try to bridge gaps between his current levels of academic and functional performance and his mastery and acquisition of grade level content, he may benefit from receiving individualized support as part of his educational programming. His current MSDE school will continue to provide him with opportunities to receive individualized support from available staff, small group instruction and opportunities to increase his access to and mastery of the general curriculum, via instruction and the services and supports indicated on his IEP, as services that are comparable to those that might be provided by a one-on-one assistant/one-on-one assistance should a one-on-one assistant be unavailable to him at the MSDE school setting.

5. The October 12, 2017 IEP requires the provision of one-on-one assistance from an instructional assistant or special education classroom teacher, and states the following:

The student's parent and the complainant agreed that the aforementioned comparable services may be appropriate and may continue to be warranted while he attends his MSDE schooling, due to the unique nature of the school setting and resources. [The student's] current MSDE school affords him the opportunity to receive instruction in settings that have inherent behavior support staff, a low teacher-student ratio (one of the classes in which he was observed had a teacher student ratio of 3:1) and opportunities to remediate skill deficits.

6. The written summary of the October 12, 2017 IEP team meeting states that the "IEP team agrees to add one-on-one assistance which will be provided on a daily basis." The team documented that the following was stated by the JSES staff:

If we add a one-on-one as a supplementary aid or support, we have to be cognizant of the fact that it may not happen right away. There are dates we need to put on the IEP. The IEP date usually starts tomorrow (10/13/17), and he won't be able to get a one-on-one tomorrow. In the meantime, as a comparable service, [the student] will continue to be provided with individual support in his classes which have a low (less than 8 students) teacher-student ratio. An instructional assistant will also continue to work with him, when available.

7. A review of the IEP for other students receiving special education instruction in the separate special education classroom at the XXX reflects that, while other students require small group instruction, there were no other students who required one-on-one support or a specific teacher-student ratio.
8. 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.
9. At the XXX, both the JSES and the DJS staff are now implementing Positive Behavior Interventions and Supports (PBIS),² and are meeting together to collaborate on the use of the interventions.
10. Since being placed at the XXX in January 2018, the named student has been enrolled in English 12, geometry, conceptual chemistry, and modern world history. The school schedule reflects that he has been assigned to receive instruction in these classes from a special education teacher in a separate special education classroom.
11. Since being placed at the XXX in January 2018, the named student has also been enrolled in a career research and development course. The school schedule reflects that he has

² The PBIS is a systems approach to positive and proactive classroom management that includes preventative and responsive approaches that may be effectively implemented with all students in a classroom and intensified to support small groups or a few individual students. It involves the provision of structures and supports by school and school system leadership to support teachers and the collection of data to inform decisions to continue or modify classroom practices and systems (<https://www.pbis.org>).

been assigned to receive instruction in this class from a general education teacher in the general education. During the MSDE site visit to the XXX, the named student was observed requesting to go to the general education classroom for instruction in career research and development.

12. The general education teachers at the XXX teaching English, math, science and social studies hold certification in their respective content areas. While the general education teachers have been developing lesson plans for use by the special education teachers in the separate special education classroom, there is no documentation of regular collaboration with the special education teachers on the provision of special education instruction in the separate special education classroom.
13. Several students were removed from the XXX as a result of a major safety incident that occurred in the residence on Sunday, April 8, 2018, and no additional students are being placed at the facility at this time.
14. Prior to May 14, 2018, there was one special education teacher assigned to the separate special education classroom who was responsible for providing instruction in as many as four (4) different courses to students in the classroom simultaneously. For example, the schedule in effect when the student was first placed at the XXX reflects that instruction was provided in English 9, 10, 11, and 12 at the same time in the separate special education classroom. The special education teacher was assisted with redirection and other behavioral supports by the DJS Resident Advisors (RAs), and at times, by a second special education teacher, who was also responsible for the provision of support in other settings, such as the general education classroom and the Intensive Services Unit (ISU).³ The JSES has not ensured that the student's classes have consistently had a low student to teacher ratio as determined by the IEP team on October 12, 2017. For example, the school schedule reflects that, from January 5, 2018 to January 31, 2018, the student's English class included eight (8) students and one (1) teacher.
15. On May 14, 2018, an additional special education teacher began teaching at the XXX, resulting in a total of four (4) special education teachers assigned to the school. This has permitted the school to assign two (2) special education teachers to provide instruction and support in the separate special education classroom, one of whom also holds certification in English. Correspondence from the principal to the teachers documents that there is now time built into the school schedule for collaboration between the special and general education teachers to plan for, and evaluate the effectiveness of, the

³ The XXX is a dedicated cottage that is a separate living unit where more a more intensive level of care is provided to those youth displaying special mental health and significant behavioral problems. It is designed to provide short-term intensive interventions to assist the youth in being able to successfully return to the general population.

instruction provided in the separate special education classroom. In addition, the JSES staff have planned for instructional visits to the XXX by the JSES curriculum coordinator and for the provision of professional learning on rubric development and lesson planning in June 2018.

16. At an onsite visit conducted on May 15, 2018, the MSDE staff observed instructional materials, work samples, and the provision of instruction to the named student and other students in both the general and separate special education classrooms. In the general education classroom, there were a total of three (3) students, including the named student, one (1) teacher, and one (1) RA who provided redirection and other behavioral supports. In the separate special education classroom, there were a total of four (4) students, including the named student, two (2) special education teachers, and two (2) RAs who provided redirection and other supports.
17. A review of student work samples and teacher lesson plans and classroom observations reflect that the instruction has been provided in the courses for which students have been enrolled and to address the skills described in the IEP goals. However, the named student was observed making comments on unrelated topics to the teachers and other student throughout each class, and requiring constant redirection. The student was observed receiving redirection from up to four (4) different adults in the classroom. Despite the provision of such assistance, the student did not complete any work during the classes in which he was observed. A review of samples of the named student's classwork reflects that he has successfully completed some assignments and has not attempted to complete others.
18. During the time period that the named student has been placed at the XXX, the following occurred:
 - a. On four (4) days, liberal leave was in effect for teachers due to inclement weather resulting in no school being held;
 - b. On one (1) day, no school was held due to training of staff in XXXX;
 - c. On one (1) day, the DJS did not permit the students to receive education services due to a major security event that occurred on the previous day; and
 - d. On eight (8) days, the DJS did not permit the students to leave their cottages and instruction was attempted by the JSES staff in the residence, although not accepted by all students.
19. The counseling service provider logs document that the student has been provided with at least thirty (30) minutes of counseling two (2) times per month, and there is no documentation that other students are not receiving counseling services in accordance with their respective IEPs.

20. On January 25, 2018 and April 13, 2018, reports were made of the named student's progress towards achievement of the annual IEP goals. The reports state that the student has been making sufficient progress to achieve the goals by October 11, 2018.
 - a. The reports on the reading goal reflect that the student is able to predict outcomes, draw inferences from passages, determine cause and effect relationships in a passage, highlight and use context clues to determine the meaning of words, and recall relevant details in passages, and continues to work on the target for accuracy of these skills.
 - b. The reports on the math goal reflect that the student is able to find the sum of two (2) or more whole numbers with and without grouping, find the difference between two (2) or more whole numbers with and without grouping, find the sum and difference of three (3) whole numbers, use a calculator to solve addition and subtraction problems, and continues to work on the remaining skills and on the target for accuracy of these skills.
 - c. The reports on the writing goal reflect that the student is able to apply knowledge of subject/verb agreement, correctly use nouns, verbs, adjectives, and adverbs following grammar and syntax rules, but struggles with grammatical composure and is still working towards organizing his ideas into structured cohesive writing.
 - d. The reports on the behavior goals reflect specific information about the student's functioning from observations conducted of the student in the classroom. Those reports state that the student has difficulty remaining on task and focused at times, but that he can be redirected to complete assignments and that with prompting and encouragement, he has been able to modify his behavior and demonstrate appropriate interactions.
21. The named student is currently receiving a "C" in career research and development, conceptual chemistry, and modern world history. He is receiving a "B" in English 12 and geometry.
22. The JSES is in the process of developing a request for proposals for services that will enable it to obtain accurate information on student benchmarks and monitor student progress to guide education decision-making throughout the school year.
23. A review of the educational records of other students placed in the separate special education classroom during the time period addressed by this investigation reflects that these students were also making sufficient progress towards achievement of IEP goals and progressing through the general curriculum, with the exception of one (1) student. This student was making only minimum progress towards achievement of the goals and was failing classes due to lack of work completion prior to being transferred to adult corrections in April 2018 after a major safety incident that occurred at the XXX, and is

currently the subject of a separate State complaint investigation (State complaint #18-178).

DISCUSSION/CONCLUSIONS:

Allegation #1 Provision of Special Education Instruction

The IDEA requires that each State Education Agency (SEA) establish qualifications to ensure that personnel necessary to carry out the purposes of the IDEA are appropriately and adequately prepared and trained, including that those personnel have the content knowledge and skills to serve students with disabilities (34 CFR §300.156).

Maryland requires that instructional personnel maintain a valid Maryland Educator Certificate in the teacher's area of major assignment (COMAR 13A.05.11, 13A.12.01, and 13A.12.02).

Teachers who are certified in special education, in collaboration with general educators, can deliver special education instruction. Special education instruction can also be delivered by teachers certified in elementary, secondary, or subject areas, in collaboration with special educators and related service providers with specialization in the area of the student's need (MSDE Technical Assistance Bulletin, *Improving Outcomes for Students with Disabilities, Curriculum, Instruction, and Assessment*, March 2018).

A student with a disability may be disciplinarily removed from the current educational placement, to the extent that removal is applied to students without disabilities, for up to ten (10) school days for each incident that results in disciplinary removal. Once a change in educational placement⁴ occurs for a student with a disability as a result of a disciplinary removal, State and federal regulations require the provision of specific protections to the student disabilities (34 CFR §300.530).

These protections include the requirement that the IEP team convene within ten (10) business days of the removal to develop or review and revise, as appropriate, an existing plan to address the behavior that resulted in the removal and to determine whether the student's behavior was a manifestation of the disability. If the student's behavior is found to be a manifestation of the disability, the student must be returned to the educational placement from which the student was removed unless the parent and public agency agree to a change in placement. If the student's behavior is not found to be a manifestation of the disability, the IEP team must determine the extent to which services are necessary during the period of removal in order to enable the

⁴ A disciplinary removal constitutes a change in educational placement if the student is removed for more than ten (10) consecutive school days or ten (10) cumulative school days in a school year if those removals constitute a pattern of removal of the student.

student to progress in the general curriculum and advance toward achieving the annual IEP goals (34 CFR §300. 530).

In this case, the complainant alleges that the students at the XXX have not been provided with special education instruction from teachers who hold certification in the areas of instruction that was provided and that there has been insufficient staffing to cover all courses offered in the separate special education classroom and to provide required one-to-one support to the named student. The complainant also alleges that the students have been denied educational services due to lack of sufficient DJS staff to provide access to school. The complainant further alleges that students have been denied education services as a punishment for unsafe behavior, amounting to a change in educational placement, but have not been provided with the IDEA protections.

Based on the Findings of Facts #1 - #3, #8 - #10, #16, #17, and #20 - #23, the MSDE finds that special education instruction has been provided in all of the courses taught in the separate special education classroom. However, based on the Findings of Facts #2, #4 - #11, #13 - #15, and #17, the MSDE finds that the named student has not been provided with instruction in the career resource and development class in the placement required by the IEP and has not consistently been provided with the student to teacher staffing ratio determined necessary by the IEP team, in accordance with 34 CFR §§300.101 and .323.

In addition, based on the Findings of Facts #12, #14, and #15, the MSDE finds that, prior to May 2018, the JSES did not ensure that there was collaboration between the teacher providing special education instruction in the separate special education classroom and the general education teachers who are certified in the areas of content in which instruction was provided, as required. Therefore, this office finds that violations occurred with respect to this aspect of the allegation.

Notwithstanding the violations, based on the Findings of Facts #3, #8 - #10, #16, #17, and #20 - #23, the MSDE finds that the annual IEP goals were addressed through the provision of special education instruction and IEP supports in the separate special education classroom and that the students are progressing through the general curriculum and making sufficient progress to achieve the IEP goals.

Based on the Finding of Fact #18, the MSDE finds that there is no documentation that students missed more than ten (10) school days during the time period covered by this investigation due to student behavior. Therefore, the disciplinary protections were not required and this office does not find that a violation occurred with respect to this aspect of the allegation.

Allegation #2 Provision of Related Services

Based on the Findings of Facts #2, #3, #8, #9, #19, and #20, the MSDE finds that the documentation does not support the allegation that students are not being provided with related

Grace Reusing, Esq.
Ms. Deborah Grinnage-Pulley
June 18, 2018
Page 11

services required by the IEP, as required by 34 CFR §§300. Therefore, no violation is identified with respect to this allegation.

CORRECTIVE ACTIONS/TIMELINES:

The MSDE requires that the JSES provide documentation by August 1, 2018 that it has contacted the named student's parent to determine whether the student has been re-enrolled in an education program in the community, and if not, offered assistance with this process.

If the named student has been re-enrolled in an education program in the community or if the parent intends to do so for the 2018-2019 school year, the JSES must provide documentation that it has contacted the education program to share information about the results of this investigation by the start of the 2018-2019 school year for that education program. The JSES must also provide documentation that it has offered to participate in any IEP team meeting held by the community-based education program to consider the strategies and supports needed by the named student to assist him with maintaining attention to tasks, including whether he continues to require a small teacher to student ratio.

TECHNICAL ASSISTANCE:

Technical assistance is available to the parties through Dr. Nancy Birenbaum, MSDE. Dr. Birenbaum may be contacted at (410) 767-0255.

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

Grace Reusing, Esq.
Ms. Deborah Grinnage-Pulley
June 18, 2018
Page 12

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
 Carol A. Williamson
 Sylvia A. Lawson
 Crystal Fleming-Brice
 XXXXXXXXX
 Dawn Hubbard
 XXXXXXXXX
 XXXXXXXXX
 Dori Wilson
 Anita Mandis
 Nancy Birenbaum