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State Superintendent of Schools

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January 17, 2017

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Office of the Public Defender
Juvenile Protection Division
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Ms. Deborah Grinnage-Pulley
Executive Director, Juvenile Services Education System
Maryland State Department of Education
200 West Baltimore Street
Baltimore, Maryland 21201

RE: XXXXX
Reference: #18-045

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.

ALLEGATION:

On November 27, 2017, 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 System (JSES) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to the above-referenced student.

The MSDE investigated the allegation that the JSES did not ensure that the student was provided with the opportunity to earn credit and progress through the general curriculum in science when he was placed by the Maryland Department of Juvenile Services (DJS) at the XXXXXXXXXX XXX (XXX) from July 5, 2017 to November 10, 2017 and in social studies from July 5, 2017 to September 5, 2017, in accordance with 34 CFR §§300.2, .101, .149, and COMAR 13A.05.11.

BACKGROUND:

The student is sixteen (16) 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.

From May 2, 2017 to October 10, 2017, the DJS placed the student at the XXX. From October 10, 2017 to October 24, 2017, the DJS placed the student at the Baltimore City Juvenile Justice Center. On October 24, 2017, the DJS released the student back into the community.

FINDINGS OF FACTS:

1. On June 8, 2017, the complainant asked the JSES if it planned to continue to provide instruction in credit bearing courses for the remainder of the school year. The JSES responded that it was offering only credit recovery¹ and non-credit bearing humanities and STEM² enrichment courses during its “summer session” from July 5, 2017 through August 29, 2017.
2. On June 26, 2017, the complainant requested that the school system continue to provide instruction in credit bearing courses during the “summer session” in order to ensure the provision of a comprehensive program for the required 220 school days per year, and the JSES agreed to do so.
3. On June 29, 2017, the JSES informed its school principals that instruction was to be provided to enable credit completion in courses in which students are passing as well as credit recovery during the “summer session.” The principals were directed not to enroll students in courses for original credits during the summer session since they would not have enough time to begin a new course, complete all course content, and demonstrate mastery of the material during that time period. Students who were not eligible for course completion or course recovery were to be provided with enrichment activities to ensure the provision of six (6) hours of instruction per day. Non-credit bearing courses in which instruction is provided were not to be reported on “summer session” progress reports, but were to be reported on the Student Record Card 7 (SR 7).
4. Prior to July 5, 2017, the student was enrolled in English 9, algebra I, government, biology, two (2) career technology education courses. The IEP required that the student be provided with special education instruction in the general education classroom. He was passing English 9, algebra I, and government by the start of the “summer session.” He was failing biology and the career technology education courses.
5. From July 5, 2017 through August 29, 2017, the JSES continued to provide a six (6) hour school day. The student was able to earn one-half (.5) of a credit in English 9 and one-half (.5) of a credit in algebra I, which enabled him to complete the courses and earn the credit required for each course. There would have been enough time in the student’s school day to also earn one-half (.5) of a credit in government in order to complete that

¹ Educational strategies that give high school students who have failed a class the opportunity to redo coursework or retake a course through alternate means and earn academic credit (*JSES Program of Studies Course Offerings and Descriptions*, November 2016).

² STEM refers to science, technology, engineering, and math (www.ed.gov).

class as well, which would have resulted in his having earned one and one-half (1.5) credits during the “summer session.” Instead, the student continued to be provided with instruction in the career technology education courses, and earned one-half (.5) a credit in each course, for a total of two (2) credits earned during the “summer session.”

6. Social studies instruction was not provided at the XXX in the general education classroom during the “summer session” because the social studies teacher was assigned to provide instruction in career technology education courses. Science instruction was not provided at the XXX because the science teacher, who did not hold certification in math, was assigned to provide instruction in math as a result of a math teacher vacancy.
7. There is documentation that the JSES began recruitment for the vacant math teacher position at the XXX without delay, and that this position was filled on October 25, 2017. There is documentation that the JSES has also hired a human resource staff member and that continuous, ongoing recruitment efforts are made to fill vacant positions and to obtain substitute teachers at the JSES schools.
8. From the start of the 2017-2018 school year until October 10, 2017, the student was placed in English 10, geometry, government, and two (2) career technology education credit bearing courses.
9. A review of the records of current JSES students who were placed at the XXX during the “summer session” reflects that there was one student who was unable to complete courses he was taking and was not enrolled in credit bearing courses during the “summer session.” The JSES has scheduled an IEP team for the student, who was in the eighth (8th) grade, to determine whether the lack of opportunity to complete science and social studies classes during the “summer session” had a negative impact on his ability to be promoted to the ninth (9th) grade sooner and if so, the compensatory services to be provided.
10. With respect to current JSES students who were placed in other DJS facilities during the “summer session,” one (1) student at the XXXXXXXXXXXXXXXXXXXXXXXX was not provided with instruction in two (2) courses that he could have completed. An IEP team meeting has been scheduled to determine the impact of the violation. Another student at the Baltimore City Juvenile Justice Center was unable to complete courses in which he was enrolled, but has subsequently graduated with a Maryland High School Diploma.

CONCLUSIONS:

In this case, the complainant alleges that the student could not complete courses he was taking in social studies and science during the “summer session” because the JSES did not offer the regular school year credit bearing course programs of instruction for this time period. Therefore, the complainant asserts that the JSES does not provide a comprehensive education program for the required 220 school days per year. The complainant also alleges that the student did not have access to a science course from the start of the 2017-2018 school year until he was released from the XXX.

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Based on the Findings of Facts #1 - #5, the MSDE finds that the JSES offered credit bearing courses for the required six (6) hours per week for at least 220 school days per year, in accordance with COMAR 13A.05.11.

However, based on the Findings of Facts #3 - #6, and #9, and #10, the MSDE finds that the JSES did not ensure that decisions made about the courses to be continued during the “summer session” were consistently based on student needs and the guidance provided to its schools. Therefore, this office finds that a violation occurred.

Notwithstanding the violation, based on the Finding of Fact #5, the MSDE finds that the student was able to earn credits to progress through the general curriculum during the “summer session.” Based on the Findings of Facts #9 and #10, the MSDE further finds that corrective action is being taken for other students who may have been impacted by the violation. Therefore, this office does not require student-specific corrective action for this violation.

Based on the Findings of Facts #6 - #8, the MSDE finds that the JSES did not ensure that the student had access to instruction in science and to instruction in math by a certified math teacher from August 29, 2017 until October 10, 2017, in accordance with 34 CFR §§300.2, .101, .149 and COMAR 13A.05.11.07 and 13A.12.01.03. Therefore, this office finds that a violation occurred.

Notwithstanding the violation, based on the Findings of Facts #5 and #8, the MSDE finds that the student was able to complete the math course that taught by a non-certified teacher during the “summer session” and was able to take other credit bearing courses at the start of the 2017-2018 school year. Therefore, this office finds that there was no negative impact on the student and does not require student-specific corrective action.

CORRECTIVE ACTION/TIMELINE:

The MSDE requires that the JSES provide documentation by May 1, 2018 that it has a process in place at each JSES school to determine, prior to the start of each “summer session,” the courses to be provided during the “summer session,” based on student need, and to ensure that instruction is provided in those courses. The documentation must include a description of how the school system will evaluate the effectiveness of the steps taken and monitor to ensure that the violations do not recur.

TECHNICAL ASSISTANCE:

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

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

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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 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: XXXXXX
 Carol A. Williamson
 Sylvia A. Lawson
 Crystal Fleming-Brice
 Tiombe Olumiji
 Dawn Hubbard
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