



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

July 20, 2018

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Ms. Deborah Grinnage-Pulley  
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Maryland State Department of Education  
200 West Baltimore Street  
Baltimore, Maryland 21201

RE: XXXXX  
Reference: #18-178

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 June 7, 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. 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:

**XXXXXXXXXXXXXXXXXXXXXXXXXXXX (XXXXXX)**

1. The JSES did not ensure that the student was provided with special education instruction in the educational placement and using the instructional methodology required by the Individualized Education Program (IEP) by teachers who meet the State requirements for content knowledge and skills to serve students with disabilities when placed by the

Maryland Department of Juvenile Services (DJS) at XXXXXXXX, in accordance with 34 CFR §§300.101, .156, .323, and COMAR 13A.05.11.07 and 13A.12.01 - .04.

2. The JSES did not ensure that the student was provided with the accommodations required by the IEP when placed by the DJS at XXXXXXXX in accordance with 34 CFR §§300.101 and .323.

**XXXXXXXXXXXXXXXXXXXXXXXXXXXX (XXXX)**

3. The JSES did not ensure that the student was provided with special education instruction in the educational placement and using the instructional methodology required by the IEP by teachers who meet the State requirements for content knowledge and skills to serve students with disabilities when placed by the DJS at the XXXX, in accordance with 34 CFR §§300.101, .156, .323, and COMAR 13A.05.11.07 and 13A.12.01 - .04.
4. The JSES did not ensure that the student was provided with the accommodations required by the IEP when placed by the DJS at the XXXX in accordance with 34 CFR §§300.101 and .323.
5. The JSES did not ensure that the student's need for Extended School Year (ESY) services was considered by the IEP team when he was placed by the DJS at the XXXX, in accordance with 34 CFR §§300.106 and COMAR 13A.05.01.08 and .09.

**XXXXXXXXXXXX (XXX)**

6. The JSES did not ensure that the student was provided with special education instruction in the educational placement and using the instructional methodology required by the IEP when placed by the DJS at the XXX, in accordance with 34 CFR §§300.101, .156, .323, and COMAR 13A.05.11.07 and 13A.12.01 - .04.
7. The JSES did not ensure that the student was provided with the accommodations required by the IEP when placed by the DJS at the XXX in accordance with 34 CFR §§300.101 and .323.
8. The JSES did not ensure that the student's need for ESY services was considered by the IEP team when he was placed by the DJS at the XXX, in accordance with 34 CFR §300.106 and COMAR 13A.05.01.08 and .09.
9. The JSES did not ensure that the IEP team considered positive behavioral interventions to address lack of expected progress due to interfering behaviors when the student was placed by the DJS at the XXX, in accordance with 34 CFR §300.324.

10. The JSES did not ensure that the student was provided with special education instruction that meets the curriculum standards established by the MSDE when the student was placed by the DJS at the XXX, in accordance with 34 CFR §300.17.

**BACKGROUND:**

The student is seventeen (17) 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 student is currently placed at the local adult correctional facility located in the Frederick County, where the Frederick County Public Schools (FCPS) provides the education program. During the time period covered by this investigation, the student was placed by the Maryland Department of Juvenile Services (DJS) at the following locations:

From June 7, 2017 to June 27, 2017 – XXXX

From June 27, 2017 to July 10, 2017 - XXXX

From July 10, 2017 to August 4, 2017 – XXXXXXXXXXXXXXXXXXXXXXX

From August 4, 2017 to October 31, 2017 – XXX

From October 31, 2017 to April 8, 2018 – XXX

**FINDINGS OF FACTS:**

XXXXXX

1. There were twelve (12) school days between June 7, 2017 and June 22, 2017, the student's last day in the education program at XXXXXXXXXXX before being transferred to the XXXX. The IEP in effect during that time period reflects that the student's disability manifests itself in "low motivation, lack of energy, lack of work completion, shutting down, disrespect, and a feeling of being overwhelmed," which has resulted in weaknesses in the areas of reading, writing, and math. The IEP states that the student "has an inability to maintain focus in class," and that he "attempts to engage in off task conversations with peers, which minimizes his academic success." It also reflects that the student, who was in the ninth grade, had a history of school absence and refusal to participate in instruction and assessments. It further reflects that an escort plan had been developed as a result of the student's leaving class without permission, but the student would not comply with the plan.
2. At the May 9, 2017 IEP team meeting during which the IEP was developed, the team decided that the student continued to require the supports of Behavior Intervention Plan

(BIP) that was developed on November 14, 2016 by the Frederick County Public Schools (FCPS). The BIP states that the IEP team is to evaluate the effectiveness of the interventions every four (4) to six (6) weeks. The IEP required the following supports and interventions included in the BIP, to be provided on a daily basis:

- a. Provision of notes with key words left blank for the student to fill in and follow along during instruction throughout the day in all classes;
- b. Monitoring of test responses and frequent and immediate feedback in all content areas to ensure that the student is working on the correct section and responding in the proper place;
- c. Provision of a calculation device, as needed;
- d. Provision of time and one-half to complete work;
- e. Provision of breaks during instructional and testing times in all content areas;
- f. Instruction in a small group setting;
- g. Repetition of directions and limitation of directions to no more than three (3) per class;
- h. Use of organizational aids to support work completion in all content areas;
- i. Use of a highlighter strip to follow along when being read to out loud;
- j. Use of sticky notes to take notes from text;
- k. Provision of “memory cues” such as a word bank, multiple choice responses, and fill in the blanks for responding;
- l. Consideration of the use of alternate ways to demonstrate grasp of concepts, including through the use of assistive technology;
- m. Provision of checks for understanding;
- n. Use of manipulatives, when appropriate;
- o. Pairing with peers to complete work, when appropriate;
- p. Chunking of texts;

- q. Modification of assignments so that there are no more than three (3) items to be completed per page, and the provision of a break after completion of the three (3) items;
  - r. Use of sensory items such as therapy bands, paper clips, squishy balls and hard candy (mints) in the classroom;
  - s. Provision of random positive rewards;
  - t. Placement in the classroom in close proximity to an adult and away from distracting peers;
  - u. Provision of the opportunity to earn a snack during breaks for completing assigned work; and
  - v. Provision of a “feelings/emotions/wristband.”
3. The IEP required the provision of special education instruction in a separate special education classroom for English and math by a special education teacher. The IEP reflected that the provision of special education instruction in all other academic classes was to be in the general education classroom primarily by a general education teacher. However, the IEP also stated that “when enrolled in mainstreamed classes [the student] will receive special education services provided by a special education teacher in co-taught classes and/or support as provided by instructional assistant.”
4. All of the teachers at XXXXX were certified in the content area in which they provide instruction except for the math teacher. However, there is documentation that the math teacher consults with a “lead teacher” who is certified in the area of instruction in the planning of instruction.
5. There is documentation that the student’s teachers were provided with the IEP and BIP. Samples of the student’s classwork at XXXXX demonstrate that he was provided with notes with key words left blank to fill in and follow along during instruction, monitoring of responses and frequent feedback to ensure understanding, chunking of texts, use of organizational aids, provision of word banks and multiple choice responses. However, there is no documentation of the consistent use of all of the supports that were required to be provided on a daily basis, and there are samples of the student’s work that reflect that he was given more than three (3) items to be completed per page. In addition, there is no documentation that the IEP team considered the effectiveness of the BIP interventions, as required.
6. There is documentation that the student was pulled from the general education classroom for instruction by a special education teacher for math and English. However, there is no

documentation that the special education teacher collaborated with teachers who were certified in the content of the instruction provided to the student.

7. The English, math, and social studies teachers are also certified special education teachers. The school staff report that these teachers, as well as the principal, supported the student in the general education classroom. However, there is no documentation of this or that support was provided by an instructional assistant in the general education classroom.
8. While placed at XXXX, the student earned one (1) credit in English 10, geometry, and biology, and one-half (.5) credit in government and career research and development.

**XXXXXXXXXX**

9. The DJS placed the student at the XXXXX for three (3) school days between June 27, 2017 and July 10, 2017.

**XXXXXX**

10. The DJS placed the student at XXXXX for nineteen (19) school days during the summer session from July 10, 2017 to August 4, 2017.

**XXXXXX**

11. On August 4, 2017, the DJS transferred the student back to the XXXX, where he was placed until October 31, 2017, during which time he attended school at the facility for the last seventeen (17) days of the summer session and almost one (1) marking period of the beginning of the school year.
12. All of the teachers at the XXX were certified in the content area in which they provide instruction except for the math teacher. The teachers also held special education certification. There is documentation that the math teacher consults with a “lead teacher” who is certified in the area of instruction in the planning of instruction.
13. There is documentation that the student’s teachers were provided with the IEP and BIP on June 29, 2017 and that services were initiated on July 5, 2017, the next scheduled school day. There is documentation that the student’s teachers were provided with the IEP and BIP again on Tuesday, August 8, 2017 following the student’s reentry into the XXXXX on Friday, August 4, 2017.
14. There is documentation that the student was provided with special education instruction in math and English from a special education teacher outside of the general education classroom.

15. There is documentation since January 2018 that the special education teacher consults with the general education teachers on the provision of instruction on Tuesdays. While the school staff report that this has occurred since 2017, it was not documented prior to January 2018.
16. There is no documentation that special education teachers or instructional assistants were assigned to provide assistance in the general education classrooms. The JSES has developed an Inside General Education Instructional Support Log in order to ensure that this service is being provided and properly documented.
17. On August 26, 2017, reports of the student's progress towards achievement of the annual IEP goals were made. The reports state that the student was initially noncompliant upon his placement at the XXXX, but that he had "settled down" and was making sufficient progress to achieve the goals by May 8, 2018. The reports document that the goals were being addressed and that the student was being provided with context clues, nonverbal social cues to reinforce appropriate behavior, use of a highlighter, encouragement, prompting, and breaks.
18. On September 15, 2017, the IEP team at the XXXXX conducted a reevaluation and determined that the student continues to meet the criteria for identification as a student with a disability under the IDEA. The team documented that the student continues to have difficulty focusing on work and remaining in a given area, and that he "often shuts down and tries to avoid moving forward." However, the team also documented that the interfering behaviors exhibited by the student were the result of his being frustrated with being away from his home and the uncertainty of his return, and that his behavior improves once he develops rapport and trust with the staff. The team discussed that the student demonstrated progress in all of his classes and with his IEP goals, but that he failed his government class due to frequent refusals to complete assignments during the last three (3) weeks of the summer term. The team decided that the failing grade was not a reflection of the student's ability to be successful with the current accommodations and supports, but that he transitioned to two (2) different schools over the summer and his inconsistent work completion was "more a reflection of his focus on return to a community-based school."<sup>1</sup> However, there is no documentation that the IEP team evaluated the effectiveness of the interventions required by the BIP, as required.
19. At the September 15, 2017 IEP team meeting, the team decided that the student would periodically be provided with access to digital readers for reading selections that interest him.

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<sup>1</sup> The student had been moved around to different DJS facilities frequently, and school staff report that the student believed that he was being released back into the community with each move.

20. At the September 15, 2017 IEP team meeting, the team considered whether the student, who was in the 10<sup>th</sup> grade, required Extended School Year (ESY) services. The IEP included goals for the following: (a) increasing academic skills from the early 4<sup>th</sup> grade level; (b) independently beginning tasks; (c) demonstrating appropriate emotional responses and social interactions; and (d) being attentive and participating in learning. The IEP team decided that none of these are critical life skills. The team also decided that the student was not demonstrating emerging skills or breakthrough opportunities, and was not demonstrating significant interfering behaviors. In addition, the team decided that the nature and severity of the student's disability did not warrant ESY and that no other special circumstances existed. However, the team did not document the basis for any of these decisions.
21. There is documentation that the student's teachers were provided with the IEP that was revised from the September 15, 2017 IEP team meeting. However, there is no documentation that the new social studies teacher, who started on September 27, 2017, was provided with a copy of the revised IEP.
22. There is documentation that the XXXX has been provided with digital readers and that the school staff are provided with training on the use of the technology. However, there is no documentation that the student was consistently provided with other supports that were required to be provided on a daily basis.

**XXXXXXXXXX**

23. On October 31, 2017, the DJS transferred the student to the XXX, where he was placed until April 8, 2018, during which time he attended school at the facility for the last five (5) days of the first marking period of the year, the entire second marking period, and almost the entire third marking period.
24. On November 2, 2017, the student's teachers were provided with a copy of the IEP and BIP.
25. On January 25, 2018, reports were made of the student's progress towards achievement of the IEP goals. The reports document that the goals were being addressed, but that the student was making "minimum progress" towards achievement of the reading, writing, and some of the social, emotional, and behavioral goals. The reports state that the student's motivation, cooperation, and work completion had been inconsistent even with the provision of the IEP supports and accommodations.
26. On March 12, 2018, the IEP team at the XXX convened to address the lack of expected progress. The team documented that, for safety reasons, the DJS does not permit students to possess items such as the "feelings/emotions/wristband" and the sensory items required by the IEP. The team also documented that, due to the DJS' restrictions on



student movement, the alternate environment in which the student completes work must be located within the classroom.

27. At the March 12, 2018 IEP team meeting, the team considered information that the teachers had provided reduced distractions, assignments broken down into smaller units, chunking of text and assignments, and positive incentives and rewards, but that the student was getting easily frustrated after providing minimum effort and would ask for a break before even beginning his work. The team discussed that the student was refusing to engage in work and accept assistance from teachers and that he was failing science and social studies classes. The team also discussed that several attempts were made to administer classroom-based assessments, but that the student refused to participate. However, there is no documentation that the team evaluated the effectiveness of the interventions required by the BIP, as required, or considered other positive behavioral interventions to address the student's interfering behaviors and lack of expected progress. There is no documentation that the IEP team has considered the student's need for ESY services since September 15, 2017.
28. There is documentation that the student's teachers were informed of the IEP that was revised following the March 12, 2018 IEP team meeting.
29. There is documentation that the student received instruction in math and English in a separate special education classroom from a special education teacher, and in all other classes in the general education classroom from general education teachers.
31. There is documentation that a special education teacher was assigned to provide support in the general education classrooms.
32. The student's work samples reflect that he was not consistently provided with chunking of text and the modification of assignments so that there were no more than three (3) items to be completed per page. In addition, the samples do not reflect that the work was aligned with grade level curriculum
33. There is documentation that the XXX has been provided with digital readers and that the school staff are provided with training on the use of the technology. However, there is no documentation that the student was consistently provided with other supports that were required to be provided on a daily basis.
34. The student's transcript reflects that he earned one-half (.5) of a credit each in algebra II, conceptual chemistry, English 11, and career research and development. While he was passing the government class, he did not complete the course.
35. The JSES Curriculum Coordinator is in the process conducting observations of the teachers at all of the JSES schools during the provision of instruction and is conducting staff training in order to ensure that classwork is aligned with the grade level curriculum.

36. There is documentation that, on January 29, 2018, professional development activities for JSES teachers included training on the following: (1) ensuring that teachers are informed of the IEP requirements and that they use an accommodations matrix to ensure the provision of all required accommodations; (2) collaboration between general and special education teachers in the planning, delivery, and evaluation of effectiveness of instruction; (3) instructional approaches such as co-teaching and facilitated support in the general education classroom; (4) progress monitoring and ensuring that IEP teams address lack of expected progress; and (5) use of iPad devices.
37. On June 7, 2018, a special education support meeting was held with the XXX staff during which time, additional training and support was provided in areas including use of the accommodations matrix to ensure the provision of required accommodations and the requirement to review and revising the IEP to address interfering behavior.

#### **DISCUSSION/CONCLUSIONS:**

The public agency must ensure that each student is provided with the special education and related services required by the IEP (34 CFR §§300.101 and .323).

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).

In this case, the complainant alleges that, while placed at XXXXXXXXXX, the student was not provided with special education instruction that was co-taught by special and general education teachers or "appropriate pull out instruction" due to lack of teachers and classroom space. The complainant also alleges that the student was not provided with the instructional supports and modifications required by the IEP, and as a result, he struggled academically.

**Allegation #1                    Provision of Special Education Instruction Consistent with the IEP  
at XXXXXX**

Based on the Findings of Facts #1, and #3 - #8, the MSDE finds that the student was provided with special education instruction by the providers and in the placement required by the IEP, in accordance with 34 CFR §§300.101 and .323.

However, based on those Findings of Facts, this office also finds that there is no documentation that the special education instruction provided in the general education classroom was supported by a special education teacher or instructional assistant, or that the special education teacher collaborated with the general education teachers on the provision of special education instruction in the separate special education classroom from June 7, 2017 to June 27, 2017, in accordance with 34 CFR §§300.101 and .323. Therefore, this office finds that violations occurred with respect to this allegation.

Notwithstanding the violations, based on the Finding of Fact #36, the MSDE finds that the JSES has subsequently taken steps to ensure that the violations do not recur. Therefore, no additional school-based corrective action is required.

**Allegation #2                    Provision of Accommodations at XXXXXX**

Based on the Findings of Facts #1, #2, and #5, the MSDE finds that, while there is documentation that the required accommodations were provided, some accommodations that were required on a daily basis were not consistently provided<sup>2</sup> and the effectiveness of the BIP interventions were not evaluated, as required by the IEP, from June 7, 2017 to June 27, 2017, in accordance with 34 CFR §§300.101 and .323. Therefore, this office finds that a violation occurred with respect to this allegation.

Notwithstanding the violation, based on the Finding of Fact #36, the MSDE finds that the JSES has subsequently taken steps to ensure that the violation does not recur. Therefore, no additional school-based corrective action is required.

**Allegation #3                    Provision of Special Education Instruction Consistent with the IEP  
at the XXXXXX**

Based on the Findings of Facts #1, #3, and #9 - #18, the MSDE finds that the student was provided with special education instruction, there is no documentation that additional support was provided in the general education classroom, as required, from August 4, 2017 to October 31, 2017, in accordance with 34 CFR §§300.101 and .323.

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<sup>2</sup> This does not include those accommodations that were prohibited or restricted by the DJS for safety reasons.

Notwithstanding the violation, based on the Finding of Fact #16, the MSDE finds that the JSES has taken steps to ensure that the violation does not recur. Therefore, no additional school-based corrective action is required.

In addition, based on the Finding of Fact #15, the MSDE finds that there is no documentation that the special education teacher consulted with general education teachers who hold certification in the content areas in which instruction was provided from August 4, 2017 to January 2018, in accordance with 34 CFR §§300.101 and .323.

Notwithstanding the violation, based on the Findings of Facts #15 and #36, the MSDE finds that the JSES has subsequently taken steps to ensure that the violation does not recur. Therefore, no additional school-based action is required.

Furthermore, based on the Finding of Fact #11, #18, #19, and #21, the MSDE finds that there is no documentation that the social studies teacher had the IEP from September 27, 2017 to October 31, 2017, in accordance with 34 CFR §300.323. Therefore, this office finds that violations occurred with respect to this allegation.

Notwithstanding the violations, based on the Finding of Fact #36, the MSDE finds that the JSES has subsequently taken steps to ensure that teachers are informed of the requirements of each IEP. Therefore, no additional school-based corrective action is required.

**Allegation #4                      Provision of Accommodations at the XXXXXX**

Based on the Findings of Facts #1, #2, and #11, #13, #17 - #19, #22, the MSDE finds that, while there is documentation of the provision of required accommodations and access to digital readers, there is no documentation of the consistent provision of accommodations that were required to be provided on a daily basis.<sup>2</sup> There is also no documentation that the effectiveness of the BIP interventions was evaluated, as required by the IEP, from August 4, 2017 to October 31, 2017, in accordance with 34 CFR §§300.101 and .323. Therefore, this office finds that a violation occurred with respect to this allegation.

Notwithstanding the violation, based on the Finding of Fact #36, the MSDE finds that subsequently, the JSES has taken steps to ensure that the violation does not recur. Therefore, no additional school-based corrective action is required.

**Allegation #5                      ESY Determination at the XXXXXX**

At least annually, each public agency must ensure that the IEP team determines whether a student requires Extended School Year (ESY) services in order to receive a Free Appropriate Public Education (FAPE). These services are the individualized extension of specific special education and related services that are provided to a student beyond the normal school year (34 CFR §§300.106, .324, and COMAR 13A.05.01.03).

The public agency may not limit the type, amount, or duration of these services. Therefore, while these services are typically provided during the summer months when schools are not in session, the public agency may not limit consideration of the need for these services to this time period since a student may require these services during any break in the school schedule (34 CFR §§300.106, .324, and COMAR 13A.05.01.03).

When determining whether ESY services are required for the provision of FAPE, the IEP team must consider all of the factors below.

1. Whether the student's IEP includes annual goals related to critical life skills;
2. Whether there is a likelihood of substantial regression of critical life skills caused by the normal school break and a failure to recover those lost skills in a reasonable time;
3. The student's degree of progress toward mastery of the annual IEP goals related to critical life skills;
4. The presence of emerging skills or breakthrough opportunities;
5. Interfering behaviors;
6. The nature and severity of the disability; and
7. Special circumstances (COMAR 13A.05.01.08).

After considering the required factors, the IEP team must decide whether the benefits that a student receives from the education program during the regular school year will be significantly jeopardized if the student is not provided with ESY services (*MM v. School District of Greenville Co. (S.C.)*, 303 F3d. 523, 37 IDELR 183 (4<sup>th</sup> Cir. 2002).

Based on the Findings of Facts #1, #2, #17, #18, and #20, the MSDE finds that, while all of the required factors were considered when making the ESY services determination, the basis for the decisions made were not documented and the IEP team's decisions were not consistent with the data, as required by 34 CFR §§300.324 and .503. Therefore, this office finds that violations occurred with respect to the allegation.

**Allegation #6                      Provision of Special Education Instruction Consistent with the IEP  
at the XXXX**

Based on the Findings of Facts #3, #23 - #25, #28, #29, #31, and #34, the MSDE finds that the student was provided with special education instruction in the placement required by the IEP and in the manner required by the IEP from October 31, 2017 until April 8, 2018. Therefore, this office does not find that a violation occurred with respect to the allegation.

**Allegation #7 Provision of Accommodations at the XXX**

Based on the Findings of Facts #2, #24 - #28, #32, and #33, the MSDE finds that, while there is documentation of the provision of required accommodations and access to digital readers, there is no documentation of the consistent provision of accommodations that were required to be provided on a daily basis<sup>2</sup> or that the effectiveness of the BIP interventions was evaluated, as required by the IEP from October 31, 2017 to April 8, 2018, in accordance with 34 CFR §§300.101 and .323. Therefore, this office finds that a violation occurred with respect to the allegation.

Notwithstanding the violation, based on the Finding of Fact #37, the MSDE finds that the JSES has subsequently taken steps to ensure that the violation does not recur. Therefore, no additional school-based corrective action is required.

**Allegation #8 ESY Determination at the XXX**

Based on the Finding of Fact #27, the MSDE finds that the IEP team at the XXX did not make a determination regarding the student's need for ESY services. Based on the Findings of Facts #20 and #23, the MSDE finds that there was no requirement to consider the student's need for ESY services while the student was placed by the DJS and the XXX. Therefore, this office finds that no violation occurred with respect to the allegation.

**Allegation #9 Review/Revision of the IEP to Address Lack of Expected Progress at the XXX**

Based on the Findings of Facts #25 - #27, the MSDE finds that the JSES did not ensure that the IEP team addressed the student's lack of expected progress due to interfering behavior, in accordance with 34 CFR §300.324. Therefore, this office finds that a violation occurred with respect to the allegation.

Notwithstanding the violation, based on the Finding of Fact #37, the MSDE finds that the JSES has subsequently taken steps to ensure that the violation does not recur. Therefore, no school-based corrective action is required.

**Allegation #10 Provision of Instruction that Meets Curriculum Standards at the XXX**

Based on the Findings of Facts #23 and #32, the MSDE finds that the JSES did not ensure that the special education instruction that was provided meets the curriculum standards required by the MSDE, in accordance with 34 CFR §300.17. Therefore, this office finds that a violation occurred with respect to the allegation.

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Notwithstanding the violation, based on the Finding of Fact #35, the MSDE finds that the JSES is taking steps to ensure that the violation does not recur. Therefore, no school-based corrective action is required.

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

#### **Student-Specific**

The MSDE requires that the JSES provide documentation by October 1, 2018 that it has contacted the FCPS to request that an IEP team meeting be held to do the following:

1. Evaluate the effectiveness of the BIP and review and revise, as appropriate, the IEP to address the student's interfering behavior, and to determine the student's need for ESY services consistent with the data; and
2. Determine the compensatory services to be provided to remediate the violations identified through this investigation.

If the student has returned to the community, the JSES must provide documentation of attempts to locate the student and offer to provide assistance in enrolling in an education program in the community. If the student is already enrolled in an education program in the community, the JSES must provide documentation that it has offered compensatory services or other remedy for the violations identified.

#### **School-Based – XXXX**

The MSDE requires that the JSES provide documentation by November 1, 2018 that steps have been taken to ensure that the IEP teams document the basis for decisions regarding each factor considered when determining a student's need for ESY services, and that IEP team decisions are consistent with the data.

### **ADDITIONAL DISCUSSION:**

A copy of this Letter of Findings is being provided to the MSDE Policy and Accountability Branch for its use in conducting upcoming monitoring activities of the JSES.

### **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

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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 student's parent 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 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  
       Carol A. Williamson  
       Sylvia A. Lawson  
       Crystal Fleming-Brice  
       Dawn Hubbard  
       XXXXXXXXX  
       XXXXXXXXX  
       Dori Wilson  
       Anita Mandis  
       Nancy Birenbaum  
       Leigh Dalton  
       Vicky Ciulla