

MARYLAND CORRECTIONAL SPECIAL EDUCATION ACTION PLAN

A. Introduction and Definitions

1. This Action Plan prescribes the steps the Maryland State Department of Education, Correctional Education Office and the Maryland Department of Public Safety and Correctional Services have taken or will take to enhance the programs and services provided to prisoners with educational disabilities confined in Maryland's Adult Correctional Facilities. Except where specified, the specific terms of this Action Plan are not necessarily required by the Individuals with Disabilities Education Act, 20 U.S.C. §§ 1401 et seq. ("IDEA") or by Maryland State law. Nothing in this Action Plan is intended to abrogate or restrict any rights, remedies or obligations such prisoners have under federal or state law.

2. This Action Plan is adopted in conjunction with the Stipulated Dismissal on Conditions filed in Melvin C., et al. v. Shilling, et al., C.A. No. HAR-91-497 (United States District Court for the District of Maryland), to resolve the issues presented in that lawsuit without further litigation. Nothing in this Action Plan shall be construed as an admission of liability by any party to that suit.

3. Maryland's correctional special education programs currently are operated by the Maryland State Department of Education, Correctional Education Office ("MSDE") with the cooperation and assistance of the Maryland State Department of

Public Safety and Correctional Services ("DPSCS"). In the event that MSDE transfers part or all of its responsibility for the correctional special education programs to DPSCS, DPSCS shall be bound by this Action Plan to the same extent as MSDE would have been bound had MSDE retained responsibility for the programs.

4. The terms "Maryland Adult Correctional Facilities" and "Adult Correctional Facility" as used throughout this Action Plan refer to all correctional facilities and institutions for sentenced individuals operated by the Maryland Department of Public Safety and Correctional Services, including, but not limited to, the Patuxent Institution and all Division of Correction facilities, including Pre-Release Units and the Reception, Diagnostic and Classification Center ("RDCC").

5. The term "Maryland Adult Correctional Intake Facility" as used throughout this Action Plan refers to all facilities and institutions used for the intake or screening of prisoners by the Maryland Department of Public Safety and Correctional Services, including, but not limited to RDCC, the Maryland Correctional Institution for Women, and any other intake facility that may be established in the future.

6. The term "prisoner" or "student" as used throughout this Action Plan will mean any individual who is not a high school graduate and does not possess the equivalent of a high school diploma, who is under the age of twenty-one (21) years, and who is incarcerated in a Maryland Adult Correctional Facility.

B. Identification, Screening, Referral and Assessment

1. All prisoners will be screened for possible special education eligibility through an intake interview and educational and medical tests which will be administered upon a prisoner's entry to the system. Absent extraordinary circumstances relating to individual inmates, within twenty-one (21) days after each prisoner's arrival at a Maryland Adult Correctional Intake Facility, MSDE and/or DPSCS will conduct the intake interview, administer educational screening tests, and review the results of the interview and educational tests to identify those prisoners with a history of special education services and/or with indicators of special education eligibility. The interview and educational screening tests will be administered and reviewed by staff with specific training designed to enable them to perform those functions. DPSCS also will conduct medical screening tests (hearing, vision and general physical condition) upon a prisoner's entry into the system.

2. With respect to any prisoner for whom the intake interview indicates that the prisoner previously received special education and/or related services, within five (5) working days of receipt of that information, MSDE will request the prisoner's prior special education records, including but not limited to prior IEPs, evaluations and assessments, and any reports indicating or regarding student progress in fulfilling the goals and objectives of the IEPs. When received, MSDE will forward those records to the MSDE staff at the prisoner's maintaining

institution. In implementing this provision, MSDE will use the following procedures:

a. In every instance in which the intake interview reveals an indication of prior special education eligibility, MSDE will make both a telephone and a written request for records to the school system;

b. In every instance in which MSDE does not receive a definitive response to the initial requests within fifteen (15) days, MSDE will make appropriate follow-up contact(s) by telephone or in writing to obtain, if possible, a definitive response;

c. For students whose last known school was within a Maryland school system, MSDE will make the initial request to the specific individual whom MSDE has identified as the contact person for the particular school system;

d. For students from out-of-state school systems, the same initial and, if needed, follow-up requests will be made to the out-of-state school system;

e. If MSDE is not able to obtain the student's prior educational records but is able to obtain other relevant information about the prisoner's prior special educational placement, that information will be communicated promptly to the MSDE staff at the prisoner's maintaining institution and will be recorded in the prisoner's education file; and

f. MSDE will maintain records of all contacts made in an attempt to obtain prior educational records, and that information will be transferred to the prisoner's educational file once all efforts to obtain the prior records are completed.

3. MSDE will develop and implement a tracking protocol(s) or form(s) designed to ensure that the procedures set out in ¶¶ B.1 and B.2 of this Action Plan are implemented.

4. If the information gathered under ¶ B.2 above indicates that the prisoner was previously placed in a special education program, then upon transfer to the prisoner's maintaining facility, that prisoner (A) will be referred promptly to the Admission-Review-Dismissal (ARD) Committee for appropriate action and (B) will be placed, within ten (10) working days after arrival at the maintaining institution, in an interim educational program as follows:

a. Each prisoner who was the subject of an individualized education program (IEP) developed by a school, local education agency (LEA), or other qualified agency within one (1) year prior to the prisoner's most recent arrest will be placed in a comparable special education program for a period up to sixty (60) days while the ARD Committee assesses the prisoner, and, if appropriate, develops a new IEP for the prisoner. The prisoner's existing IEP will be implemented on an interim basis by the school officials to the extent

feasible and appropriate, without referral to the ARD Committee, unless (a) there is specific information or reason(s) which would make such placement infeasible and/or inappropriate, or (b) MSDE has been unable after diligent effort to obtain the IEP from the education agency that developed it. In a case in which interim implementation is determined not to be feasible and/or appropriate, the specific information or reason(s) will be documented in the prisoner's education file and the prisoner will be placed in a regular education program.

b. Each prisoner who was the subject of an IEP developed by a school, LEA, or other qualified agency more than one (1) year prior to the prisoner's most recent arrest will be placed in a regular education program for a period up to sixty (60) days while the ARD Committee assesses the prisoner and, if appropriate, develops a new IEP for the prisoner.

5. Each month, DPSCS will provide to the principal or educational supervisor at each Maryland Adult Correctional Facility a list of all prisoners under twenty-one (21) years of age then incarcerated in that Facility. MSDE will ensure that these lists are reviewed to identify any prisoner who has not previously been screened for special education eligibility and who may be eligible. Any prisoner so identified will be screened for eligibility using techniques consistent with this Action Plan within thirty (30) days following such identification.

6. Within six months after the effective date of this Action Plan, MSDE will ensure that any prisoner who entered the Maryland Adult Correctional System before June 1, 1991, who currently is under twenty-one (21) years of age, and who is not a high school graduate and does not possess the equivalent of a high school diploma has been screened for special education eligibility using techniques consistent with this Action Plan.

7. Upon assignment or transfer to a special mental health unit, any prisoner who is under twenty-one (21) years of age, who is not a high school graduate and does not possess the equivalent of a high school diploma, and who is not currently receiving special education or related services shall be referred automatically to the ARD Committee for consideration of whether the prisoner should be assessed for special education eligibility, unless the prisoner already has been screened and his/her educational condition has not changed since that screening.

8. Within six (6) months after the effective date of this Action Plan, MSDE will develop and provide to all ARD Committees a list of assessment tools available to such Committees for assessing the existence and extent of the various educational disabilities enumerated in the IDEA and State law.

C. Development and Implementation of Individualized Education Programs

1. In developing individualized education programs (IEPs) for prisoners with educational disabilities, MSDE will ensure

that the ARD Committee will assess each prisoner's individual educational needs and will develop IEPs consistent with those needs.

2. IEPs will include a statement of the prisoner's present level of educational performance, a statement of specific short-term measurable instructional objectives within the capability of the prisoner, and a statement of the special education and related services to be provided to the student.

3. If the ARD Committee determines that a prisoner needs counseling services, MSDE will ensure that the prisoner will be provided with counseling services that relate to the prisoner's individual education needs and that the prisoner's IEP will include a statement of the type and frequency of counseling services to be provided.

4. MSDE will include, in each IEP, a transition plan which will include vocational or training services, where such vocational or training services are deemed appropriate by the ARD Committee.

5. MSDE will ensure that the goals and short-term instructional objectives of each IEP will be reviewed by the ARD Committee sixty (60) days after implementation of the IEP and at least annually thereafter to determine whether the goals and objectives are being met, whether specific services are being provided, and whether modifications are necessary.

D. Provision of Special Education Services, Continuum of Services and Related Services

1. MSDE currently provides special education and related services at most Maryland Adult Correctional Facilities. Nothing in this Action Plan shall prevent MSDE and DPSCS from modifying the manner in which services are distributed by making certain services available to eligible prisoners, specifically including but not limited to modifications consolidating services at fewer locations and transferring prisoners eligible for those services to those locations, provided that such modifications do not relieve MSDE or DPSCS of any obligation to locate eligible inmates and to prepare IEPs for eligible inmates under this Action Plan, including but not limited to Parts B and C of this Action Plan, and provided that such modifications do not affect inmate probation, parole or release dates. Until this Action Plan has been implemented fully, as provided in the Stipulated Dismissal on Conditions described in ¶ A.2 above, MSDE and DPSCS shall not implement any fundamental change in the manner in which special education services are distributed without describing the proposed changes to and consulting with plaintiffs' counsel before the changes are to be implemented.

2. MSDE will not place any generalized maximum or limit on the amount, type or intensity of special education and related services provided to prisoners with educational disabilities. MSDE will provide such services to prisoners in the amount, type or intensity specified in their IEPs.

3. Prisoners who are eligible to receive special education and related services and who are housed in a mental health or medical unit will be provided adjusted services to account for the prisoner's particular situation and condition. A prisoner placed in one of these special units need not receive special education and related services if the prisoner is not expected to remain in the unit for more than ten (10) days. If a prisoner is expected to remain in the special unit for more than ten (10) days, MSDE will consult with the prisoner's physician or other appropriate health professional to initiate the delivery of educational services. A prisoner in one of these special units shall receive a minimum of six (6) hours per week of educational services, provided that the prisoner's physician or other health professional agrees that the prisoner's condition does not require further limitations on the quantity or type of services. If a prisoner is expected to remain in the special unit for more than sixty (60) days, the ARD Committee must meet to review the services being provided no later than the sixtieth day of the inmate's assignment to the special unit.

4. Prisoners who are eligible for special education and related services and who are placed in disciplinary segregation will receive services as follows:

- a. A prisoner may spend up to ten (10) days in segregation without receiving any special education or related services;

b. A prisoner in segregation for more than ten (10) and up to thirty (30) days will receive modified special education services, generally consisting of two hours per week of direct instructional time and, if such are provided in the prisoner's IEP, related services to the fullest extent practicable;

c. If a prisoner is expected to remain in segregation for more than thirty (30) days, the prisoner will be referred for scheduling of an ARD Committee meeting, to be held no later than forty-five (45) days after the prisoner's entry into segregation, to determine the appropriate services to be provided to the prisoner while in segregation;

d. MSDE will not impose any generalized maximum or limit on the quantity of services provided to prisoners who are in segregation for more than thirty (30) days, although security and other issues associated with disciplinary segregation will be considered by the ARD Committee as factors in determining the adjustment of the quantity and type of services provided to a prisoner in segregation for more than thirty (30) days.

e. In addition to the procedures set forth in this paragraph, MSDE is currently exploring the use of computer and other technology to supplement the special education services offered to prisoners confined in segregation. Although MSDE will make all efforts to do

so, it is explicitly agreed that a failure by MSDE to identify and utilize such technology in this context shall not constitute a failure to implement this Action Plan, for which the parties may invoke arbitration as provided by Paragraphs 18 through 21 of the Stipulated Dismissal Without Prejudice on Conditions.

5. Prisoners classified to the Maryland Correctional Adjustment Center ("Supermax") will be subject to the procedures concerning disciplinary segregation above, including the circumstances in which an ARD Committee meeting is required.

6. MSDE will ensure that all prisoners who are in need of Intensity IV and V special education and/or related services, as determined by the ARD Committee, will receive those services, subject to the provisions of this Action Plan.

E. Procedural Safeguards

1. For each prisoner referred for assessment to the ARD Committee, MSDE will seek the participation and involvement of the prisoner's parent(s) or guardian or, where appropriate under applicable law, a surrogate parent. MSDE will establish the following timetable for contacting parents or guardians, or, where appropriate, appointing a surrogate parent:

a. Within ten (10) days of a referral to the ARD Committee, MSDE will prepare and mail to the prisoner's parent(s) or guardian notice of the ARD Committee meeting. This notice will include a summary of the

parent's or guardian's procedural rights, instruction on how to contact school officials to arrange a mutually convenient time and place for the ARD Committee meeting, and information concerning resources available to assist the parent or guardian in the ARD process;

b. If, within ten (10) days of the mailing of the notice to the prisoner's parent(s) or guardian, MSDE has not received a response from the parent(s) or guardian, MSDE will attempt alternative means of contacting the parent(s) or guardian; and

c. If a prisoner's parent(s) or guardian cannot be identified or located or if the prisoner is a ward of the State, MSDE will appoint a surrogate parent for the prisoner.

2. MSDE will ensure that the prisoner's parent(s), guardian, or surrogate parent is afforded a reasonable opportunity to be present for each ARD Committee meeting.

3. Within three months after the effective date of this Action Plan, MSDE, with the assistance of plaintiffs' counsel, will develop a listing of resources available to provide parents, guardians, and/or prisoners with information and assistance concerning the ARD process. This listing will include Parent Information and Training Centers as such are available throughout the State and legal and other advocacy groups offering assistance to educationally disabled individuals. MSDE will update this listing annually. In addition to notifying prisoners and their

parents or guardians of the availability of this listing in the initial notices of the ARD Committee meetings, MSDE will maintain the listing at each institution school and make it available upon request.

4. Within thirty (30) days of the effective date of this Action Plan, MSDE, with the assistance of Plaintiffs' counsel, will develop a Notice that contains a concise summary of inmate rights, remedies and responsibilities for special education. The Notice will be posted in each correctional facility (a) in the library; (b) in the institution school; and (c) on the facility's inmate bulletin board(s). The Notice also will be provided to all inmates under the age of twenty-one (21) years upon entry into the corrections system.

5. MSDE will assign one (1) or more persons to serve as Parent Coordinator(s). The Parent Coordinator(s) will ensure that the procedural safeguards described in this Action Plan are provided.

F. In-Service Training

1. Within six (6) months before or six (6) months after the effective date of this Action Plan, all employees in each of the groups described below will have attended at least one in-service training program:

a. All employees of MSDE or DPSCS who participate in ARD Committee meetings;

b. All school principals and assistant principals at Maryland's Adult Correctional Facilities;

c. All special education teachers and special teachers' aides at Maryland's Adult Correctional Facilities;

d. All non-special education teachers and teachers' aides at Maryland's Adult Correctional Facilities;

e. The Parent Coordinator;

f. All Classification Counselors; and

g. All employees responsible for conducting intake interviews.

2. MSDE's in-service training will emphasize the importance of notifying the appropriate personnel if a prisoner is believed to be educationally disabled and properly assessing and placing the prisoner in a timely manner.

3. MSDE's in-service training for ARD Committee members will include specific training concerning the identification of each educational disabling condition enumerated in the IDEA and State law and instruction on any revised IEP procedures. MSDE's in-service training will emphasize the importance of identifying each prisoner's individual educational needs as well as the importance of developing IEPs that are tailored to and consistent with those needs.

4. MSDE will ensure that the MSDE Correctional Education Handbook is available to every individual who performs psychological or educational evaluations in connection with a prisoner's confinement in a Maryland Adult Correctional Facility.

SIGNATORIES:

PUBLIC JUSTICE CENTER, INC.

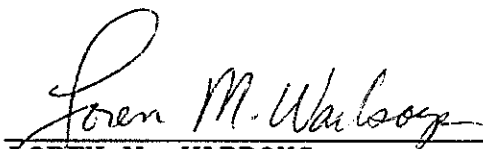


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