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July 27, 2017

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Mr. Jeffrey Gladhill  
Director of Special Education  
Washington County Public Schools  
10435 Downsville Pike  
Hagerstown, Maryland 21740

RE: XXXXX  
Reference: #17-146

Dear Parties:

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

**ALLEGATIONS:**

On May 18, 2017, the MSDE received a complaint from Ms. XXXXXXXXXXXXX, hereafter, “the complainant,” on behalf of her son, the above-referenced student. In that correspondence, the complainant alleged that the Washington County Public Schools (WCPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to the student.

The student graduated at the end of the 2016 – 2017 school year and received a Maryland High School Diploma. Therefore, the student is no longer entitled to a Free Appropriate Public Education (FAPE). However, because the entitlement to a FAPE is not required in order to seek compensatory services (*Letter to Riffel*, 34 IDELR 292, August 22, 2000), the MSDE investigated the following allegations:

1. The WCPS has not ensured that the student’s Individualized Education Program (IEP) has addressed all of his needs, since the start of the 2016 - 2017 school year, in accordance with 34 CFR §§300.101, .320 and .324. Specifically, the complainant expressed concern about the student’s functional life skills and transition needs not being addressed.

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2. The WCPS did not follow proper procedures in response to a request, in Spring 2017, for a reevaluation of the student, in accordance with 34 CFR §§300.303 - .306 and COMAR 13A.05.01.04-.06.

**INVESTIGATIVE PROCEDURES:**

1. On May 19, 2017, the MSDE provided a copy of the State complaint, by facsimile, to Mr. Jeffrey Gladhill, Director of Special Education, WCPS.
2. On May 25, 2017, Ms. Dori Wilson, Chief, Family Support and Dispute Resolution Branch, MSDE, Ms. Anita Mandis, Chief, Complaint Investigation Section, MSDE, and Ms. K. Sabrina Austin, Education Program Specialist, MSDE, discussed the allegations with Mr. Gladhill and Ms. Marjorie Gray, Supervisor of Special Education, WCPS.
3. On May 26, 2017, the MSDE sent correspondence to the complainant that identified the allegations subject to this investigation. On the same date, the MSDE notified the WCPS of the allegations and requested that the WCPS review the alleged violations.
4. On May 31, 2017, Ms. Austin conducted a telephone interview with the complainant about the allegations to be investigated. Also on May 31, 2017, the complainant provided the MSDE with documentation.
5. On May 31, 2017, June 14 and 20, 2017, and July 12, 2017, the MSDE requested the WCPS to provide documentation for consideration.
6. On June 1 and 20, 2017, the complainant provided additional documentation to the MSDE.
7. On June 26 and 28, 2017, the WCPS provided documents to the MSDE for consideration.
8. On June 28, 2017, Ms. Austin and Ms. Mandis conducted a site visit at XXXX  
XXXXXXXXXXXX (XXXXXXXXXXXX) and interviewed the following school system staff:
  - a. Mr. XXXXXXXXXXX, Assistant Principal, XXXXXXXXXXX;
  - b. Ms. Nadine Fox, Special Education Specialist, WCPS;
  - c. Ms. XXXXXX, IEP Case Manager, XXXXXXXXXXX;
  - d. Mr. XXXXXX, Principal, XXXXXXXXXXX;
  - e. Ms. XXXXXXX, Instructional Assistant, XXXXXXXXXXX;
  - f. Mr. XXXXXXX, Assistant Principal, XXXXXXXXXXX; and
  - g. Ms. Marianne Mooney, Transition Specialist, WCPS.

Mr. Gladhill and Ms. Gray participated in the site visit as representatives of the WCPS and to provide information on the school system's policies and procedures, as needed.

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9. On July 26, 2017, Ms. Wilson, Ms. Mandis, Ms. Austin, Mr. Alan Dunkalow, Assistant Attorney General, Office of the Attorney General, MSDE, and Ms. Christy Stuart, Secondary Transition Specialist, MSDE, discussed the allegations by telephone with Mr. Gladhill, Mr. Jackoby, Ms. Felice, Mr. Compton, Mr. McCarty, Ms. Breena Eichelberger, Supervisor of Special Education for Case Management and Compliance, WCPS, and Ms. Rochelle Eisenberg, legal counsel to the WCPS.
10. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
  - a. IEPs dated February 28, 2012, February 19, 2013, February 17, 2014, March 23, 2015, March 15, 2016, March 6, 2017, and amended IEP, dated June 1, 2017;
  - b. Prior Written Notices, dated March 15, 2016, May 9, 2017, and June 1, 2017;
  - c. "Meeting Minutes," dated March 15, 2016, May 6, 2016, March 6, 2017, and May 9, 2017;
  - d. Eligibility Tool for determining participation in the Maryland Alternate Assessments, signed May 9, 2017;
  - e. The student's work schedule and activities, January 2017 to June 2017;
  - f. The WCPS High School Program of Studies, 2016 - 2017;
  - g. The report of a career assessment conducted by the Division of Rehabilitation Services (DORS) on May 23 and 24, 2017;
  - h. The WCPS class of 2017 graduation schedule, undated;
  - i. Electronic mail (email) correspondence between the school staff, the complainant, and the DORS staff, January 2017 to May 2017; and
  - j. Correspondence from the complainant alleging violations of the IDEA, received by the MSDE on May 18, 2017.

### **BACKGROUND:**

The student is eighteen (18) years old and attended XXXXXXXXXXXXXXXXXXXX for the 2016 - 2017 school year. At the time the State complaint was filed, the student was identified as a student with Autism under the IDEA, and had an IEP that required the provision of special education and related services (Doc. a).

During the period of time addressed by this investigation, the complainant was provided with written notice of the procedural safeguards (Doc. a).

**ALLEGATION #1: IEP THAT ADDRESSES THE STUDENT'S FUNCTIONAL LIFE SKILLS AND TRANSITION NEEDS SINCE THE START OF THE 2016 - 2017 SCHOOL YEAR**

**FINDINGS OF FACTS:**

1. The IEP in effect at the start of the 2016- 2017 school year was developed on March 15, 2016, when the student was in the 11th grade. The IEP reflects that the student was pursuing a Maryland High School Diploma, and was projected to graduate on June 1, 2017 (Doc. a).

**Functional and Life Skills**

2. The IEP describes the student as having “limited expressive and receptive language skills which impact his comprehension skills and ability to fully respond orally or in writing.” It states that he “needs frequent repetition and redirection due to poor attention skills and his disability,” that his “very slow” processing speed “impedes” his comprehension and recall of information,” and that he requires 100% extended time for processing information and to produce written responses (Doc. a).
3. The IEP includes information about the student’s cognitive functioning based on the results of assessments conducted in February 2012. The information states that the student is functioning in the “extremely low range” in verbal comprehension and working memory, in the “borderline range” in perceptual reasoning, and in the “low average range” in processing speed. While the school staff report that the student no longer has these needs and that this area does not impact the student’s academic achievement and/or functional performance, the IEP does not reflect updated levels of performance in this area (Doc. a).
4. At the time the March 2016 IEP was developed, the results of a more recent psychological evaluation, that was conducted in February 2015, was available for review by the IEP team. The results of that evaluation reflect that the student was functioning in the “extremely low range” in verbal comprehension, working memory and processing speed, and in the “borderline” range in perceptual reasoning. At that time, his full scale IQ was reported to be 58, representing the “extremely low” range of functioning, though the evaluator noted that this score may not best explain his overall cognitive functioning (Doc. f).
5. The IEP documents that the student has needs in the area of adaptive skills based on data first obtained in 2012. It states that the student requires assistance and supervision “in all areas of daily living activities.” The present levels of performance in the IEP specifically identify that the student has the following “basic” and “functional” needs:
  - Toileting, hygiene, and grooming;

- Awareness of danger and awareness of needs;
- Attention span;
- Social interaction and community participation; and
- Judgment and self-direction.

The present levels of performance in the IEP also reflect that the student displays “extreme” responses when there is a change in his routine (Doc. a).

6. The IEP states that the student’s needs in the area of adaptive skills impact his academic achievement and/or his functional performance (Doc. a).
7. The IEP includes a goal to address the student’s understanding and meaning of information. It also includes supplementary supports to address the student’s needs relating to attention and independent work, including monitoring of independent work, repeated directions for understanding tasks, and redirection to stay on task. However, the IEP does not address the other needs that are identified in the present levels of performance relating to his functional and adaptive skills (Doc. a).
8. The school system staff report the student no longer has the adaptive and functional skills needs that are identified in the IEP. However, there is no evidence that the student’s functional and adaptive skills needs, as identified in the IEP, have been addressed since the needs were identified, and there is no documentation that these needs no longer exist. Furthermore, there is documentation that, as recently as May 2017, when considering the student’s eligibility for participation in the Maryland Alternate Assessments, the IEP team used the same data identifying the student’s functional and adaptive skills needs that is reported in the IEP (Docs. a - d).

## **Transition**

9. The transition section of the IEP in effect at the start of the 2016 - 2017 school year reflects that the student’s interests are in music and the arts, and that this information was obtained from an interview with the student that was conducted on March 15, 2016 (Doc. a).
10. The transition section of the IEP states that the student has “some understanding of daily living skills.” It also reflects that the student has “little knowledge of how to get a job and how to get into college or trade school” (Doc. a).
11. The transition section of the IEP identifies two (2) postsecondary goals:
  - The employment goal requires the student to obtain employment as a music teacher assistant.
  - The training goal requires the student to attend college and training in music.

The IEP does not include a goal in the area of independent living or indicate why the IEP team decided that such a goal was not needed (Doc. a).

12. The IEP identifies two (2) transition activities to assist the student with transitioning towards the postsecondary goals:
  - “At least once a year [the student] will meet with the Guidance Counselor and Special Education Case manager to review credit count, academic performance and any problems that are impacting the successful completion of the graduation requirements. His parents will be informed about every meeting and they will be asked to give input or support as needed.”
  - The student “will visit the tech high program to determine if he is interested in attending this school in 11th grade.”

However, both of the activities are the same activities that the team identified in the previous year’s IEP that was developed in March 2015 (Doc. a).

13. The IEP identifies Arts, Media and Communication as the required course of study. However, the school system staff report that, in order to satisfy graduation requirements, the student was pursuing the Career Research and Development course of study which requires work experience. The student worked in the school cafeteria in order to meet the work experience requirement (Docs. a, e and f, and interview with the school staff).
14. In March 2017, the IEP team revised the student’s IEP. They discussed that the student now wants to be a math teacher, wants to go to community college and then a four year university, wants to live in a house, and wants to learn to drive a car. The IEP team revised the postsecondary transition goals in employment and training based on the student’s current interests, and revised the course of study to Education, Training and Child Studies. The IEP team also added a transition activity for the student to “meet with [a] job coach and practice skills necessary to maintain a job” (Docs. a and b).
15. In March 2017, the school staff referred the student to the Division of Rehabilitation Services for the purpose of obtaining information about the student’s abilities for future employment. In May 2017, the Division of Rehabilitation Services conducted a career assessment (DORS Report) in order “to determine employment concerns, support needs, aptitudes, skills and an appropriate plan for [the student’s] future employment.” The DORS Report states that “the main vocational need is to obtain a position of interest that meets [the student’s] actual skill and ability level.” It also states that “the ideal situation would have been for him to have stayed in high school until 21 years old and exit with a Certificate so that he would be eligible for the long-term vocational support that he is going to need” (Docs. g and i).

16. The DORS Report documents that the student has the following vocational needs:
- Increased work rate to a competitive level;
  - Increased attention to task;
  - Supervision, to ensure safety;
  - Position that meets academic level, skills and abilities; and
  - Self-reported vocational areas of need and perceived barriers to employment.
- The DORS Report also documents that the student requires the following accommodations, modifications and environmental setting;
- Provision of 1-2 step verbal instructions, with demonstration, visual cues, and hand-over-hand modeling, as needed;
  - Position with no independent problem solving;
  - Reader and scribe;
  - Watch to be programmed to prompt the student to return to task;
  - Extra time, as needed;
  - Position performing 1-3 repetitive tasks;
  - Pairing with a co-worker to assist with increasing work rate to a competitive level; and
  - Job coaching to ensure mastery of tasks (Doc. g).
17. The DORS Report states that the student requires participation in “a job readiness program where he can learn employer expectations, worker traits that are acceptable on a work site.” The report contains the recommendation that, while in this program, the student perform “real or simulated work tasks to gain additional experience and transferable skills while attempting to increase his attention to task and working at a competitive rate.” The DORS Report states that, once determined “work ready,” the student will need “intensive job placement assistance for a part-time, entry-level, customized position of interest where he can receive on-the-job training.” It also states that he will need “job coaching to assist him with learning and mastering his job duties and with determining, requesting and setting up needed job site accommodations” (Doc. g).

## **DISCUSSION/CONCLUSIONS:**

### **Functional and Life Skills**

In order to provide a student with a FAPE, the public agency must ensure that an IEP is developed that addresses all of the needs that arise out of the student’s disability that are identified in the evaluation data. In developing each student’s IEP, the public agency must ensure that it includes a statement of the student’s present levels of performance, including how the disability affects the student’s progress in the general curriculum. The IEP must also include measurable annual goals designed to meet the needs that arise out of the student’s disability and enable the student to progress through the general education

curriculum, and the special education instruction and related services required to assist the student in achieving the goals (34 CFR §§300.101 and .320).

In developing each student's IEP, the public agency must ensure that the IEP team considers the strengths of the student, the concerns of the parents for enhancing the education of the student, the results of the most recent evaluation, and the academic, developmental, and functional needs of the student (34 CFR §300.324).

Based on the Findings of Facts #1 - #8, the MSDE finds that, while the IEP in effect since the start of the 2016 - 2017 school year identifies that the student has functional and daily living skills needs, the IEP does not address these needs. Therefore, the MSDE finds that a violation occurred with respect to this aspect of the allegation.

### **Transition**

Beginning not later than the first IEP to be in effect when a student turns fourteen (14) years old, and younger, if appropriate, and updated annually, the student's IEP must include the following:

- a. Measurable postsecondary goals based on age-appropriate transition assessments related to training, education, employment, and independent living, as appropriate; and
- b. A statement of needed transition services, including course of study needed to assist the student with reaching the transition goals and, if appropriate, a statement of the public and participating agencies' responsibilities or linkages before the student leaves the secondary school setting (34 CFR §300.320 and COMAR 13A.05.01.09).

Based on the Findings of Facts #1, #9 - #11 and #14, the MSDE finds the IEP identified postsecondary goals in employment and training based on the student's interests. However, based on the Findings of Facts #1 - #14, the MSDE finds that the IEP did not identify a postsecondary transition goal in the area of independent living, despite documentation of the student's needs in the area of daily living skills.

Based on Findings of Facts #1 - #11, and #14 - #17, the MSDE finds that the transition activities identified in the IEP in effect at the start of the 2016 - 2017 school year are not designed to assist the student with transitioning towards the identified postsecondary goals. Based on the Findings of Facts #1, and #9 - #17, the MSDE finds that the IEP team did not identify a transition activity that is designed to assist the student with transitioning towards the identified postsecondary goals until the development of the March 6, 2017 IEP. Therefore, the MSDE finds that a violation occurred with respect to this aspect of the allegation.



**ALLEGATION #2:                   REQUEST FOR REEVALUATION**

**FINDINGS OF FACTS:**

18.     On March 15, 2017, the complainant's educational advocate sent an email to the school staff, copied to the complainant, requesting a reevaluation of the student. She included specific diagnostic questions to be addressed by the reevaluation (Doc. e).
19.     There is documentation that the school system staff decided not to respond to the email because they did not have a release from the complainant to allow them to communicate with the educational advocate. The school staff did not contact the complainant to request a release at that time (Doc. e and interview with the school staff).
20.     On April 21, 2017, the complainant sent an email to the school staff. The complainant reported that she had not received a response to the request for reevaluation more than one (1) month earlier, and inquired about the status of the request. The school staff made a telephone call to the complainant to inform her that they needed a release to communicate with her educational advocate about the request. The complainant expressed concern that the school staff did not contact her earlier for her to understand that they were waiting for a release to respond to the request (Doc. e).
21.     On April 25, 2017, the school staff sent an email to the complainant about scheduling an IEP team meeting to address the request for reevaluation. They also sent the complainant a release to authorize communications with her educational advocate. The complainant returned the signed release the following day (Docs. e and q).
22.     On April 30, 2017 the educational advocate withdrew the request for reevaluation (Doc. e).

**DISCUSSION/CONCLUSIONS:**

If the public agency determines that the educational or related services needs, including improved academic achievement and functional performance, of the student warrant a reevaluation, or if the student's parent or teacher requests a reevaluation. A reevaluation conducted may occur not more than once a year, unless the parent and the public agency agree otherwise, and must occur at least once every 3 years, unless the parent and the public agency agree that a reevaluation is unnecessary (34 CFR §300.303).

Based on the Findings of Facts #18 - #20, the MSDE finds that, while the school staff received a request for reevaluation that was made on the parent's behalf on March 15, 2017, the school staff did not respond to the request until April 21, 2017. Therefore, the MSDE finds that there was a delay and that a violation occurred.

However, based on the Findings of Facts #21 and #22, the MSDE finds that the request for reevaluation was subsequently withdrawn, and therefore does not require student-specific corrective action.

**CORRECTIVE ACTIONS/TIMELINES:**

**Student-Specific**

The MSDE requires the WCPS to provide documentation by August 31, 2017, that the IEP team has convened and taken the following actions:

- a. Reviewed the DORS Report, including recommendations;
- b. Based on the DORS Report, identified the student's strengths, weaknesses, preferences and interests, as they relate to future employment, functional, and daily living needs;
- c. Determined services to provide the student with training and activities to address his needs, as identified in the DORS Report, relating to developing job skills and daily living skills. The services offered must include transportation, and must cover the course of a nine (9) month period, the equivalent of the period that the violations identified in this Letter of Findings occurred; and
- d. Developed a plan for the provision of those services within one (1) year of the date of this Letter of Findings.

The WCPS must ensure that the complainant is provided with written notice of the team's decisions. The complainant and the WCPS maintain the right to request mediation or to file a due process complaint to resolve any disagreement with the IEP team's decisions.

The WCPS must provide documentation, within one (1) year of the date of this Letter of Findings, that the student has been provided with the compensatory services or other remedy determined by the IEP team as a result of this investigation, or documentation of parent refusal of such compensatory services or other remedy.

**School-Based**

The MSDE requires the WCPS to provide documentation by September 30, 2017, of the steps it has taken to determine if the violations identified in the Letter of Findings are unique to this case or if they represent a pattern of noncompliance at XXXXXXXXXXXXXXXXXXXX. Specifically, a review of student records, data, or other relevant information must be

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conducted in order to determine if the regulatory requirements are being implemented and documentation of the results of this review must be provided to the MSDE. If compliance with the requirements is reported, the MSDE staff will verify compliance with the determinations found in the initial report.

If the regulatory requirements are not being implemented, actions to be taken in order to ensure that the violation does not recur must be identified, and a follow-up report to document correction must be submitted within ninety (90) days of the initial date of a determination of non-compliance. Upon receipt of this report, the MSDE will re-verify the data to ensure continued compliance with the regulatory requirements.

The MSDE also requires the WCPS to provide documentation by September 30, 2017, of the steps it has taken, including training, to ensure that the XXXXXXXXX HS staff comply with the requirements relating to the violations identified in this Letter of Findings.

Documentation of all corrective action taken is to be submitted to this office to: Attention: Chief, Family Support and Dispute Resolution Branch, Division of Special Education/Early Intervention Services, MSDE.

**TECHNICAL ASSISTANCE:**

Technical assistance is available to the parties by contacting Dr. Nancy Birenbaum, Compliance Specialist, Family Support and Dispute Resolution Branch, MSDE at (410) 767-7770.

Please be advised that both the complainant and the WCPS 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 school system must implement any corrective actions consistent with the timeline requirement as reported in this Letter of Findings.

Questions regarding the findings and conclusions contained in this letter should be addressed to this office in writing. The parties 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

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IDEA. The MSDE recommends that this Letter of Findings be included with any request for mediation or a due process complaint.

Sincerely,

Marcella E. Franczkowski, M.S.  
Assistant State Superintendent  
Division of Special Education/  
Early Intervention Services

MEF/ksa

c: Boyd Michael  
XXXXXXXXXX  
Dori Wilson  
Anita Mandis  
K. Sabrina Austin  
Nancy Birenbaum