



Bernard J. Sadusky, Ed.D.  
Interim State Superintendent of Schools

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June 29, 2012

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Mr. Jeff Gladhill  
Director of Special Education  
Washington County Public Schools  
820 Commonwealth Avenue  
P.O. Box 730  
Hagerstown, Maryland 21740-0730

RE: XXXXX  
Reference: #12-084

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.

**ALLEGATION:**

On April 30, 2012, the MSDE received a complaint from Ms. XXXXXXXXXXXX, hereafter, “the complainant,” on behalf of her daughter, 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 MSDE investigated the allegation that the WCPS has not ensured that the Individualized Education Program (IEP) addresses the student’s assistive technology needs (augmentative communication device) since the start of the 2011-2012 school year, in accordance with 34 CFR §§300.105 and .324.

**INVESTIGATIVE PROCEDURES:**

1. Ms. Christine Hartman, Education Program Specialist, MSDE, was assigned to investigate the complaint.
2. On May 2, 2012, Ms. Anita Mandis, Section Chief, Complaint Investigation Section, Complaint Investigation and Due Process Branch, MSDE, spoke with the complainant by telephone to clarify the allegation to be investigated. On the same date, the MSDE sent a copy of the complaint, via facsimile, to Mr. Jeff Gladhill, Director of Special Education, WCPS.
3. On May 10, 2012, the MSDE received additional correspondence from the complainant with documents to be considered in conducting the investigation.
4. On May 21, 2012, Ms. Christine Hartman, Education Program Specialist, MSDE, conducted a telephone interview with the complainant related to the allegation to be investigated. On the same date, the MSDE sent correspondence to the complainant that acknowledged receipt of the complaint and identified the allegation subject to this investigation. Also on the same date, the MSDE notified the WCPS of the allegation and requested that the WCPS review the alleged violation.
5. On June 4, 2012, Ms. Hartman and Mrs. Martha J. Arthur, Education Program Specialist, MSDE, conducted a site visit at XXXXXXXXXXXXXXXXXXXX (XXXXXXXXXXXX) to review the student's educational record, and interviewed the following WCPS staff:
  - a. Mr. Jeff Gladhill, Director of Special Education, WCPS;
  - b. Ms. Karen Newman, Coordinator/Administrator of the Job Development Program, WCPS;
  - c. Ms. Jean Anne Pugh, Special Education Specialist, WCPS;
  - d. Ms. Abby Roane, Assistive Technology Specialist, WCPS;
  - e. Ms. XXXXXXXX, Principal, XXXXXXXXXXXXXXX, WCPS;
  - f. Ms. XXXXXXXXXXXX, Speech Pathologist, XXXXXXXXXXX, WCPS;
  - g. Ms. XXXXXXXXXXXXXXX, Occupational Therapist, XXXXXXXXXXXXXXX, WCPS;
  - h. Ms. XXXXXXXXXXXXXXX, Special Education Teacher, XXXXXXXXXXXXXXX, WCPS;
  - i. Ms. XXXXXXXX, Special Education Paraprofessional, XXXXXXXXXXXXXXX, WCPS; and
  - j. Ms. XXXXXXXXXXXX, Special Education Paraprofessional, XXXXXXXXXXXXXXX, WCPS.

Ms. Marjorie Gray, Supervisor of Special Education for Case Management and Compliance, WCPS, attended the site visit as a representative of the WCPS and to provide information on the WCPS policies and procedures, as needed.

6. On June 21, 22, and 25, 2012, Ms. Hartman spoke with Ms. Gray by telephone regarding the allegation being investigated and requested that additional documentation be provided.
7. On June 25, 2012, the WCPS provided additional documentation from the student's educational record to the MSDE, via facsimile.
8. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
  - a. IEP, dated May 24, 2011;
  - b. IEP Meeting Notes, dated May 24, 2011;
  - c. Receipt of Parental Rights Document, dated May 24, 2011;
  - d. IEP Meeting Notes, dated July 27, 2011;
  - e. Notice of IEP Team Decision, dated July 27, 2011;
  - f. Receipt of Parental Rights Document, dated July 27, 2011;
  - g. IEP, dated November 14, 2011;
  - h. IEP Meeting Notes, dated November 14, 2011;
  - i. Two (2) Notices of IEP Team Decision, dated November 14, 2011;
  - j. Receipt of Parental Rights Document, dated November 14, 2011;
  - k. IEP Meeting Notes, dated November 28, 2011;
  - l. Two (2) Notices of IEP Team Decision, dated November 28, 2011;
  - m. Receipt of Parental Rights Document, dated November 28, 2011;
  - n. IEP, dated January 10, 2012;
  - o. IEP Meeting Notes, dated January 10, 2012;
  - p. Notice of IEP Team Decision, dated January 10, 2012;
  - q. Receipt of Parental Rights Document, dated January 10, 2012;
  - r. IEP Meeting Notes, dated February 21, 2012;
  - s. Notice of IEP Team Decision, dated February 21, 2012;
  - t. Receipt of Parental Rights Document, dated February 21, 2012;
  - u. IEP Meeting Notes, dated March 16, 2012;
  - v. Two (2) Notices of IEP Team Decision, dated March 16, 2012;
  - w. Receipt of Parental Rights Document, dated March 16, 2012;
  - x. IEP, dated May 2, 2012;
  - y. IEP Meeting Notes, dated May 2, 2012;
  - z. Five (5) Notices of IEP Team Decision, dated May 2, 2012;
  - aa. Receipt of Parental Rights Document, dated May 2, 2012;
  - bb. XXXXXXXXXXXXXXXXXXXXXXXXXXXX Augmentative Communication  
Reevaluation Report, dated June 25, 2002;

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- cc. Assistive Technology Assessment Report, dated November 11, 2011;
- dd. Occupational Therapy Reevaluation Report, dated November 21, 2011;
- ee. Psychological Evaluation Report, dated December 8, 2011;
- ff. Speech-Language Assessment Report, dated December 21, 2011;
- gg. Educational Assessment Report, dated January 10, 2012;
- hh. Occupational Therapy Observation Report, noted as being presented to the IEP team on February 21, 2012;
- ii. Staff Observation Report, noted as being presented to the IEP team on February 21, 2012;
- jj. Complainant's written statement, noted as being presented to the IEP team on February 21, 2012;
- kk. Occupational Therapy Observation Report, noted as being presented to the IEP team on March 16, 2012
- ll. Staff Observation Report, noted as being presented to the IEP team on March 16, 2012;
- mm. Complainant's written statement, noted as being presented to the IEP team on March 16, 2012;
- nn. XXXXXXXXXXXXXXXX Augmentative Communication Follow-Up Evaluation Report and Report of Visit/Plan of Care, dated March 13, 2012;
- oo. Recommendations of the Coordinator of Clinical Assistive Technology Services, Department of Rehabilitative & Therapeutic Services, XXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXX, dated April 27, 2012;
- pp. Recommendations of a Speech-Language Pathologist at XXXXXXXXXXX, dated March 22, 2012;
- qq. Recommendations of another Speech-Language Pathologist at XXXXXXXXXXX, dated March 26, 2012;
- rr. Complainant's written statement to the IEP Team, undated; and
- ss. State complaint submitted by the complainant and received by the MSDE on April 30, 2012.

**BACKGROUND:**

The student is fifteen (15) years old and is identified as a student with multiple disabilities under the IDEA (intellectual disability and orthopedic impairment). The student attends XXXXXXXXXXXXXXXXXXXX, where she receives special education instruction. During the period of time addressed by this investigation, the complainant participated in the education decision-making process, and she was provided with written notice of the procedural safeguards and prior written notice of the IEP team's decisions (Docs. a-aa).

## **FINDINGS OF FACTS:**

### **IEP in Effect at the Start of the 2011-2012 School Year**

1. The IEP in effect at the start of the 2011-2012 school year was developed on May 24, 2011. At that meeting, the IEP team considered the results of assessments, classroom observations, and the complainant's concerns. The data indicates that the student is nonverbal due to unintelligible articulation caused by cerebral palsy, and that she benefits from the use of a XXXX XXXX XXXX technology device (XXXX ) to assist her with communicating. Based on a review of the data, the IEP team decided that the student continues to require the use of a XXXX , but did not make a determination that a specific device was required. The IEP team also decided to revise the IEP to include consultative services from a speech/language pathologist to support staff in teaching the student to expand her use of the XXXX as a communication tool. At the time, the student used a XXXXX XXXX <sup>1</sup> (XXXX) XXXX at school and at home (Docs. a-c and bb).
2. Subsequent to the May 24, 2011 IEP team meeting, the complainant obtained an updated version of the XXXX being used by the student at home, a XXXX XXXX XXXX<sup>1</sup> (XXXX ), and requested that an IEP team meeting be convened to consider her request for the WCPS to purchase a XXXX for the student's use at school. The basis for the complainant's request was that she wanted the student to use the same device at home and at school, but did not want the student to transport her home device to school for use in that setting (Doc. d).

### **July 27, 2011 IEP Team Meeting**

3. On July 27, 2011, the IEP team considered the complainant's request that the student be provided with the use of the XXXX , and recommended that an assistive technology assessment be conducted to assist in determining whether the student required the requested device (Docs. d and e).

### **November 14, 2011 IEP Team Meeting**

4. On November 14, 2011, the IEP team reviewed the report of the assistive technology assessment which indicates that the student primarily communicates through the use of "natural behaviors," and uses the assistive technology device to express "high frequency"

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<sup>1</sup> XXXX is a company that manufactures and sells alternative and augmentative communication devices for nonverbal individuals. The XXXXX is a portable computer that utilizes software which converts text (or pictures) into speech, thereby providing nonverbal communicators with a computerized "voice." The MT4 model is no longer in production, but is still supported by XXXX. The XXXX XXXX is a more recent model of the same type of device and is also a portable computer utilizing software that converts text (or pictures) into speech. It utilizes a Windows operating system and has internet access, email, and text messaging (<http://www.dynavotech.com/products/> and <http://www.spectronicsinoz.com/product/16314>).

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words. The report recommends expanding the vocabulary available on the current XXXX to include as many messages as possible to encourage communication, since the student was not able to generate “novel utterances” by spelling out words. The report also recommends that words and concepts not yet understood by the student be added to the device in order to encourage her to expand her vocabulary (Docs. g, h, and cc).

5. At the November 14, 2011 IEP team meeting, the complainant indicated that the XXXX XXXX would be the best device to meet the student’s needs because it can be programmed for additional vocabulary for continued communication development. The team decided that this could be achieved by adding vocabulary to the current device. At the meeting, the IEP team also considered concerns by the complainant and the special education teacher about the impact of the student’s fine motor skills deficits on her ability to use an assistive technology device, and recommended that an occupational therapy assessment be conducted (Docs. g-i).

#### **November 28, 2011 IEP Team Meeting**

6. On November 28, 2011, the IEP team met to review the report of the occupational therapy assessment. The report indicates that the student has difficulty stabilizing her arm when utilizing the communication device, which impacts her ability to select the correct icon on the screen. The report further indicates that, once the therapist adjusts the size of the icons on the device to make them larger, the student’s accuracy on the device increases. The report also contained a recommendation to add consultative occupational therapy services to the IEP to provide the student and her teachers with strategies for improving the stabilization of the device to ensure student access (Docs. k and dd).
7. Based on its review of the occupational therapy assessment report, the IEP team determined that the occupational therapist would offer strategies for adaptations or modifications of the device required as a result of the student’s motor skills needs. The team also decided to begin the three (3) year reevaluation process and recommended that educational, adaptive behavior, and speech/language assessments be conducted (Docs. k and l).

#### **January 10, 2012 IEP Team Meeting**

8. On January 10, 2012, the IEP team met to review the assessment data, which indicates that the student’s cognitive skills are in the “Moderate to Mild Intellectual Disability range,” and that she benefits from the use of tangible reinforcements to complete tasks. The data also indicate that the student has difficulty comprehending multiple words and phrases, and that, when she was observed using the XXXX , she was able to manipulate

the screen pages to find the icons she wanted, but used only single word icons. She was also unable to type words into the device for novel utterances. The data also document

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that the student was able to use an iPad assistive technology device that was stabilized in an upright position when it was introduced during the assessment (Docs. n, o, and ee-gg).

9. Based on its review of the updated assessment reports, the IEP team determined that, because the student used the XXXX in the same way she utilized the XXXX, and did not demonstrate the ability to access the additional features available on the , the XXXX continued to provide her with educational benefit. Because the iPad is small and easily carried throughout the school, the team also decided to provide the student with an iPad as a supplemental assistive technology device (Docs. n-p).
10. In order to address the complainant's concerns about the student's progress in the area of improving her communication skills, the IEP team decided that outcomes related to communication would be reported more clearly through a separate goal, instead of being incorporated in the other goals, as was previously done (Docs. n-p).

#### **February 21, 2012 IEP Team Meeting**

11. On February 21, 2012, the IEP team met to address the complainant's concerns about the student's ability to use the iPad, given her fine motor deficits. The school staff reported that the student was observed using the iPad, and that, while she was sometimes unable to select the correct icon on the screen, her performance improved as she became more familiar with the device. It was reported that the student sometimes "double tapped" the icons by accident, causing her to navigate to the wrong screen, but that the sensitivity of the screen could be adjusted in order to correct the problem. The school staff further reported that the student was also able to navigate back to the correct page when an error occurred, and was able to utilize the "scroll" feature (Docs. r, hh, and ii).
12. The complainant again requested that the student be provided with the XXXX because it has a large vocabulary and is capable of "novel utterances." She also asserted that, because it is bigger and heavier than either of the other devices, it is less likely to fall and get damaged and, therefore, requires less stabilizing. It was noted by school-based members of the team that the XXXX can be programmed to allow for "novel utterances," but that, since the student does not have the skills to utilize this feature, it is not required. It was also noted that an iPad case that converts to a stand has been purchased to protect the device and provide stability for the student's use (Docs. r and jj).
13. Based on its review of the data, the IEP team determined that the iPad provides the student with educational benefit, but agreed to continue to conduct observations of the student's use of assistive technology devices in response to the complainant's continued concerns (Docs. r and s).

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### **March 16, 2012 IEP Team Meeting**

14. On March 16, 2012, the IEP team met to review reports of staff observations of the student utilizing the three (3) different communication devices (the XXXX, the XXXX , and the iPad). The reports indicate that the student was able to use the devices, but that she requires cuing and prompting for all educationally-based responses. The reports also indicate that the student demonstrates greater accuracy with the iPad than she does for either of the other devices, and that she is able to independently turn it on and off (Docs. u, kk and ll).
15. The IEP team also considered the complainant's concern that the iPad is fragile, while the XXXX is sturdier. It was noted by school-based members of the team that XXXX devices may be damaged, as well, and that a stand can be used to stabilize the device. The complainant also expressed concerns about the different software utilized with the iPad. The complainant indicated that the student's private speech therapist had recently installed different software on the XXXX and requested that the same software be used at school. The team discussed how well the student adapts to various software programs. The school-based members of the team asked that the complainant provide the team with a copy of the private speech therapist's report which documents the change in software and recommendations for its use in school (Docs. u and mm).
16. At the meeting, the team considered information from school staff that the iPad case did not provide sufficient stability of the device, and decided that an iPad stabilizing stand would be used for this purpose. The IEP team determined that both the XXXX and the iPad provide the student with educational benefit, but that the iPad provides the student with a more mobile device that may have greater applications for the student in the future (Docs. u and v, and interview with the WCPS staff).

### **May 2, 2012 IEP Team Meeting**

17. On May 2, 2012, the IEP team considered documents provided by the complainant as indicated below, and determined that the XXXX is not required in order to ensure the student is provided with an appropriate assistive technology device.
  - a. A private assistive technology report containing a recommendation that the student utilize the same software at school that she uses at home. The team noted that the software on the iPad had already been replaced with the iPad-compatible version of the XXXX software.
  - b. A note from a speech-language pathologist stating that the student was seen "in order to obtain an updated device for the purpose of meeting her communication



needs.” The note indicates that the student’s “entire communication system is based on the XXXX XXXX XXXX,” and that the student requires a duplicate device for

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use at school. The team rejected the note because the speech-language pathologist did not contact school staff to verify the accuracy of the information provided by the complainant, which was the basis for the recommendation.

- c. A letter from another speech-language pathologist containing a recommendation for the use of the XXXX. The letter acknowledges that the speech-language pathologist had not seen the student “in many years.” The team rejected the letter because the recommendation was not based upon an assessment of the student’s need for a XXXX and because the speech-language pathologist did not obtain information from school staff when making the recommendation.
  - d. A letter from a third speech-language pathologist indicating that using a different XXXX at home and at school can significantly impact the student’s ability to learn and be an effective communicator, and thus, the student should be provided with the XXXX for use at school since she uses this device at home. The letter acknowledges that the speech-language pathologist has not worked directly with the student but that she has reviewed the student’s records. The team rejected the letter because the speech-language pathologist, who is a Clinical Fellow and not a certified speech-language pathologist, had not worked directly with the student and did not obtain information from school staff when making the recommendation (Docs. x-z and nn-rr).
18. The June 4, 2012 report of the student’s progress toward achievement of the communication goal indicates that the student is making sufficient progress to achieve the goal (Doc. x).

### **DISCUSSION/CONCLUSIONS:**

The public agency is required to provide each student with a disability requiring special education instruction with a Free Appropriate Public Education (FAPE) (34 CFR §300.101). A FAPE is defined as special education instruction and related services that is provided at public expense in conformity with a properly developed IEP (34 CFR §300.17).

An IEP must include annual goals for the student to improve skills in the areas of need arising from the student’s disability, identified from information about the student’s present levels of academic achievement and functional performance. It must also include a statement of the special education instruction and related services necessary to assist the student in achieving those goals (34 CFR §300.320).

When identifying the areas of need, the team must determine the present levels of academic, developmental, and functional levels of the student's performance. In doing so, the IEP team must consider the strengths of the student, the concerns of the parents for enhancing the education of the student, and the results of the most recent evaluation. The IEP team must also  
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consider whether there are any communication needs and whether the student requires assistive technology devices and services. When the IEP team determines that additional data is needed to identify a student's needs, the public agency must ensure that assessment results are considered by the IEP team within ninety (90) days of the date the team determines that assessments are required (34 CFR §300.324 and COMAR 13A.05.01.06E).

In this case, the complainant alleges that the WCPS is required to provide the student with a XXXX device because it offers more vocabulary than the XXXX and because the iPad is too small and fragile and the keyboard too sensitive for the student to use because of her limited gross and fine motor skills (Doc. ss).

Based on the Findings of Facts #1 – #17, the MSDE finds that, in determining the student's needs for assistive technology, the IEP team considered assessment data, information from the student's teachers and private service providers, and concerns of the complainant. Based on those same Findings of Facts, the MSDE finds that the team determined the modifications and supports to be provided in order to address the complainant's concerns regarding the assistive technology device currently being used.

The complainant also alleges that there is no data to support the team's decision that the student receives educational benefit from the assistive technology devices provided because educational benefit is measured by whether a student is making meaningful progress in the general education curriculum, and the student is not participating in the general education curriculum (Doc. ss). However, the Courts have held that, for students with the most significant cognitive disabilities who are not working to achieve grade-level content standard objectives, educational benefit can be measured by determining whether the student is making meaningful progress toward improving the skills addressed by the annual IEP goals (*Steinberg, et al., v. Weast, et al.*, 132 F. Supp. 2d 343 (D. Md. 2001)).

Based on the Finding of Fact #18, the MSDE finds that there is documentation that the student made sufficient progress toward achievement of the goal to improve her communication skills with the use of the assistive technology devices provided. Therefore, the MSDE finds that the IEP team's decisions about the student's receipt of educational benefit is consistent with the data.

However, based on the Findings of Facts #4 and #5, the MSDE finds that the WCPS did not ensure that the result of the assistive technology assessment was considered by the IEP team within ninety (90) days of the determination that the assessment was needed. Therefore, the MSDE finds that a violation occurred.

The MSDE understands that the complainant continues to disagree with the IEP team's decision concerning the specific XXXX the student requires in order to receive educational benefit. While this office did not find a violation related to the team's decisions regarding the assistive technology device to be used, the complainant is reminded that she maintains the right to request mediation or to file a due process complaint to resolve the dispute.

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

The MSDE requires the WCPS to provide documentation that the IEP team has met and determined whether the delay in expanding the vocabulary on the student's assistive technology device that occurred as a result of the timeline violation in reviewing the assistive technology assessment report had a negative impact on the student's ability to benefit from her education program. If the IEP team decides that there was a negative impact, it must determine the amount and nature of *compensatory services*<sup>2</sup> needed to redress the loss of services.

The WCPS must provide the complainant with proper written notice of the IEP team's determinations, including a written explanation of the basis for the determinations, in accordance with 34 CFR §300.503. If the complainant disagrees with the IEP team's determinations, she maintains the right to request mediation or to file a due process complaint, in accordance with the IDEA. Documentation of the completion of the correction actions must be provided to the MSDE by the start of the 2012-2012 school year.

### **TECHNICAL ASSISTANCE:**

Technical assistance is available to the complainant and the WCPS by Mrs. Martha J. Arthur, Education Program Specialist, MSDE. Mrs. Arthur may be contacted at (410) 767-0255.

Please be advised that the complainant and the school system 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 requirements as reported in this Letter of Findings.

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<sup>2</sup> Compensatory services, for the purposes of this letter, mean the determination by the IEP team as to how to remediate the denial of appropriate services to the student (34 CFR §300.151).

Questions regarding the findings, conclusions and corrective actions contained in this letter should be addressed to this office in writing. The complainant and the school system 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  
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subject to a 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/ch

cc: Clayton M. Wilcox  
Marjorie Gray  
XXXXXXXXXX  
Dori Wilson  
Anita Mandis  
Martha J. Arthur  
Christine Hartman