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State Superintendent of Schools

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November 26, 2013

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Mrs. Joan Rothgeb
Director of Special Education
Prince George's County Public Schools
John Carroll Elementary School
1400 Nalley Terrace
Landover, Maryland 20785

RE: XXXXX
Reference: #14-024

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 October 1, 2013¹, 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 Prince George’s County Public Schools (PGCPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to the above-referenced student.

The MSDE investigated the allegations listed below:

1. The PGCPS did not ensure that proper procedures were followed to identify and provide a Free Appropriate Public Education (FAPE) for the student when transferring from out-of-state, in accordance with 34 CFR §§300.101, .111, and .323.

¹ On September 25, 2013, the MSDE received correspondence containing allegations of violations of the IDEA that did not include a proposed remedy, which is required to initiate a State complaint investigation. On October 1, 2013, following notification from the MSDE of the need for this information, the complainant provided the required information and the State complaint investigation was initiated (34 CFR §300.153).

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2. The PGCPS did not ensure the protection of confidentiality of the student's educational record, in accordance with 34 CFR §§300.610 and .622.

INVESTIGATIVE PROCEDURES:

1. Ms. Tyra Williams, Education Program Specialist, MSDE, was assigned to investigate the complaint.
2. On September 25, 2013, the MSDE received correspondence from the complainant that contained allegations of violations of the IDEA.
3. On September 30, 2013, Ms. Anita Mandis, Section Chief, Family Support and Dispute Resolution Branch, MSDE, contacted the complainant by telephone and clarified the complainant's allegations. Ms. Mandis also explained that a proposed remedy must be provided in order for this office to initiate a complaint investigation.
4. On October 1, 2013, the complainant provided a requested remedy and a complaint investigation was initiated. On the same date, the MSDE sent a copy of the complaint, via facsimile, to Mrs. Joan Rothgeb, Director of Special Education, PGCPS; Ms. LaRhonda Owens, Supervisor of Compliance, PGCPS; Ms. Gail Viens, Deputy General Counsel, PGCPS; and Ms. Kerry Morrison, Special Education Instructional Specialist, PGCPS.
5. On October 18, 2013, the MSDE sent correspondence to the complainant that acknowledged receipt of the complaint and identified the allegations subject to this investigation. On the same date, the MSDE notified the PGCPS of the allegations and requested that the PGCPS review the alleged violations.
6. On October 22, 28, 30, and 31, 2013 and November 4, 20, 21 - 22, and 25, 2013, the MSDE received information and documentation from the PGCPS regarding the allegations contained in the complaint, via electronic mail (email) correspondence.
7. On October 24 and 31, 2013, and November 20 and 21, 2013, the MSDE sent the PGCPS email correspondence to request information and documentation to be considered in conducting the investigation.
8. On October 31, 2013, the MSDE received email correspondence from the complainant regarding the complaint investigation. On the same day, Ms. Williams conducted a telephone interview with the complainant regarding the allegations contained in the complaint.
9. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, listed below.

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- a. Correspondence and attachments from the complainant to the MSDE, received on September 25, 2013 and October 1, 2013;
- b. The PGCPS Administrative Procedure Number 1121, dated August 1, 2006;
- c. The PGCPS Special Education Process Guide, dated November 13, 2012;
- d. The XXXXXXXX Evaluation Report, dated December 14, 2012;
- e. The XXXXXXXXXXXXX Individualized Family Service Plan, developed December 14, 2012;
- f. The PGCPS Student Registration Form, signed and dated July 8, 2013;
- g. The PGCPS student attendance data, dated August 19, 2013 through October 1, 2013;
- h. The PGCPS confidentiality training meeting agenda, dated October 9, 2013;
- i. The PGCPS confidentiality training sign-in sheet, dated October 9, 2013;
- j. Correspondence from the school staff to the complainant, dated October 20, 2013;
- k. Email correspondence from the PGCPS to the MSDE, received October 22 and 30, 2013;
- l. Notice of IEP team decisions, dated October 30, 2013; and
- m. Email correspondence from the PGCPS to the MSDE, received November 21, 2013.

BACKGROUND:

The student is five (5) years old. As a result of her family's move from XXXXXXXX to Prince George's County, Maryland, the student began attending XXXXXXXXXXXXXXXXXXXX (XXXXXXXXXXXX) at the start of the 2013-2014 school year.

On October 1, 2013, the student transferred to XXXXXXXXXXXXXXXXXXXX (XXXXXXXXXX) after her family relocated again; this time to another neighborhood within Prince George's County.

On October 30, 2013, the PGCPS conducted an IDEA evaluation and a determination was made that the student does not meet the criteria for identification as a student with a disability in need of special education and related services under Part B of the IDEA.

Prior to reaching school attendance age, the student had been identified in XXXXXXXX as a child with a disability in need of early intervention services under Part C of the IDEA, and had an Individualized Family Service Plan (IFSP) (Docs. a, d, e, and f).

ALLEGATION #1

PROVISION OF A FAPE FOR INTER-STATE TRANSFER STUDENTS

FINDINGS OF FACTS:

1. The PGCPS staff acknowledges that, although the student was previously identified as a child with a disability under Part C of the IDEA, an evaluation under Part B of the IDEA

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was not conducted when she was enrolled at XXXXXXXXXXXX ES at the start of the 2013-2014 school year (Docs. j and k).

2. On October 30, 2013, an Individualized Education Program (IEP) team at XXXXXXXXXXXX conducted an evaluation under Part B of the IDEA and determined that the student does not meet the criteria for identification as a student with a disability who requires special education and related services (Docs. d and k).
3. The PGCPS staff reports that it has scheduled a professional development training for November 26, 2013 with the school staff at XXXXXXXXXXXX. The school system staff reports that the purpose of the training is to ensure that students transferring into the school system are properly evaluated and identified under the IDEA (Docs. c and l).

DISCUSSION/CONCLUSION:

A public agency is required to identify, locate, and evaluate all students with disabilities in order to ensure that they receive a FAPE. Maryland requires each local school system to ensure the provision of a FAPE to students with disabilities residing within the jurisdiction of the local school system (34 CFR §300.111 and COMAR 13A.05.02.13).

The Part C of the IDEA requires that the public agency ensure that early intervention services are made available to all infants and toddlers with disabilities from birth through age two (2) (34 CFR §303.340). The Part B of the IDEA requires that the public agency ensure that special education and related services are made available to all students with disabilities between the ages of three (3) through twenty-one (21) years (34 CFR §300.101).

In Maryland, each public agency must convene an IEP team meeting to determine if a child in transition from a local infants and toddlers program has a disability or developmental delay that requires the provision of special education and related services (COMAR 13A.05.01.06B).

The MSDE appreciates the PGCPS' response. Based on the Findings of Facts #1 and #3, the MSDE concurs with the PGCPS' determination that a violation occurred with respect to conducting an evaluation of the student who previously had an IFSP.

Based on the Finding of Fact #2, the MSDE finds that the student was no longer entitled to early intervention services through an IFSP at the time of enrollment in the PGCPS and that she was subsequently determined to not require special education and related services. Therefore, the MSDE finds that the violation did not negatively impact the student's ability to benefit from the education she received and no student-specific corrective action is required.

**ALLEGATION #2 MAINTAINING THE CONFIDENTIALITY OF THE
STUDENT'S EDUCATIONAL RECORD**

FINDINGS OF FACTS:

4. The PGCPS staff acknowledges that XXXXXXXXX school staff disclosed personally identifiable information contained in student's educational record without the complainant's consent (Docs. i and j).
5. The PGCPS has provided documentation that, on October 9, 2013, it conducted professional development training at XXXXXXXXXXXX on the requirements for maintaining the confidentiality of personally identifiable information, in order to ensure future compliance with the regulations (Docs. g and h).

DISCUSSION/CONCLUSION:

Parental consent must be obtained before personally identifiable information can be disclosed, unless the information is contained in educational records and the disclosure is authorized without parental consent by the Family Educational Rights and Privacy Act (34 CFR §99.30 and 34 CFR §§300.610 and .622).

The MSDE again appreciates the PGCPS' response. Based on the Findings of Facts #4 and #5, the MSDE concurs with the PGCPS' determination that a violation occurred related to maintaining the confidentiality of personally identifiable information.

Based on the Finding of Fact #5, the MSDE finds that the PGCPS provided training for staff at XXXXXXXXX regarding the requirements for maintaining the confidentiality of personally identifiable information. Therefore, no additional corrective action is required.

CORRECTIVE ACTION/TIMELINE:

The MSDE requires the PGCPS to provide documentation by January 1, 2014, of the steps it has taken to ensure that proper procedures are followed at XXXXXXXXX to identify, locate, and evaluate students with disabilities transferring into the school system.

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 through Mrs. Martha J. Arthur, Education Program Specialist, MSDE. Mrs. Arthur may be contacted at (410) 767-0255.

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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 the Corrective Action consistent with the timeline requirement as reported in this Letter of Findings.

Questions regarding the Findings, Conclusions and Corrective Action 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 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:tw

cc : Kevin Maxwell
Duane Arbogast
Gail Viens
LaRhonda Owens
Kerry Morrison
XXXXXXXXX
Anita Mandis
Tyra Williams