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State Superintendent of Schools

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April 27, 2015

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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: #15-063

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 14, 2015, the MSDE received a complaint from Mr. XXXXXXXXXXXXXXX, hereafter, "the complainant," on behalf of his son, 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 student.

The MSDE investigated the allegation that the PGCPS has not ensured that proper procedures were followed to provide the complainant with access to the student's educational record since April 18, 2014, in accordance with 34 CFR §300.613.

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INVESTIGATIVE PROCEDURES:

1. On April 14, 2015, Ms. Anita Mandis, Section Chief, Complaint Investigation Section, MSDE, conducted a telephone interview with the complainant to clarify the allegation to be investigated. On the same date, the MSDE sent a copy of the complaint, via facsimile, to Mrs. Joan Rothgeb, Director of Special Education, PGCPS; Dr. LaRhonda Owens, Supervisor of Compliance, PGCPS; Ms. Gail Viens, Deputy General Counsel, PGCPS; and Ms. Kerry Morrison, Special Education Instructional Specialist, PGCPS.
2. On April 16, 2015, the MSDE sent correspondence to the complainant that acknowledged receipt of the complaint and identified the allegation subject to this investigation. On the same date, the MSDE notified the PGCPS of the allegation and requested that the PGCPS review the alleged violation.
3. On April 17, 2015, Ms. Mandis requested documents from the PGCPS. On the same date, the PGCPS provided the MSDE with the requested documents.
4. On April 20, 2015, Ms. Mandis conducted a telephone interview with the complainant.
5. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
 - a. Reports of the student's progress toward achievement of the annual IEP goals, dated June 5, 2012;
 - b. Correspondence between the complainant and the school system staff, dated August and September 2013;
 - c. Correspondence from the complainant to the PGCPS staff, dated March 2, 2014, and facsimile transmission verification sheets;
 - d. The PGCPS Administrative Procedure No. 1120, dated November 7, 2014;
 - e. Individualized Education Program (IEP), dated February 12, 2015;
 - f. Correspondence from the complainant to the United States Department of Education, Family Policy Compliance Office (FPCO), dated September 2, 2014;
 - g. Correspondence from the FPCO to the complainant, dated September 9, 2014;
 - h. Correspondence from the complainant to the FPCO, dated March 15, 2015; and
 - i. Correspondence from the PGCPS to the complainant, dated April 16, 2015.

BACKGROUND:

The student is nine (9) years old, is identified as a student with Autism under the IDEA, and has an IEP that requires the provision of special education and related services. He attends XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX, a nonpublic, separate, special education school, where he was placed by the PGCPS (Doc. e).

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FINDINGS OF FACTS:

1. The PGCPs Administrative Procedure No. 1120 requires that, when requests are made for public records, those requests be submitted by the school system staff to the PGCPs Office of General Counsel for review. The requestor of the records is to be informed within ten (10) days of any documents that have been requested, but will not be provided because they are not subject to disclosure under the Maryland Public Information Act. Those records that are subject to disclosure are to be provided within thirty (30) days of the request (Doc. d).
2. On March 2, 2014, the complainant made a request to the Chief Executive Officer, PGCPs, and the PGCPs Director of Special Education for copies of all correspondences between the school system and the MSDE regarding the student. The request also included copies of “audit/change logs of the [s]tudent’s 2011-2012 school year 4th quarter progress reports for Individualized Education Program (IEP) goals” from the PGCPs staff (Doc. c).
3. There is correspondence between the complainant and the school staff, and the complainant and the school system staff from August 2013 that the school system staff sent the complainant the 2011-2012 school year 4th quarter progress reports. There is correspondence from August and September 2013 that the complainant expressed the belief that the 2011-2012 school year 4th quarter progress reports that had been provided to him had been changed. The correspondence reflects that both the school and the school system staff responded that no changes had been made to the reports (Docs. a and b).
4. On September 2, 2014, the complainant filed a complaint with the United States Department of Education, Family Policy Compliance Office (FPCO) that the PGCPs had violated the Family Educational Records and Privacy Act (FERPA) by not providing him with access to the records that he requested on March 2, 2014 (Doc. f).
5. On September 9, 2014, the FPCO provided the complainant with written correspondence acknowledging receipt of the FERPA complaint (Doc. g).
6. On March 15, 2015, the complainant requested information from the FPCO about the status of the FERPA complaint that he filed with that office (Doc. h).¹
7. On April 16, 2015, the PGCPs provided the complainant with a response to his March 2, 2014 request for access to records. In that response, the PGCPs indicated that, as they had previously informed the complainant, there were no records to provide him of

¹ To date, the complainant has not received a response from the FPCO (Interview with the complainant).

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changes made to the 2011-2012 school year 4th quarter progress report because no changes had been made to the report. The PGCPs also informed the complainant that his request for other records was being submitted to the PGCPs Office of General Counsel in accordance with the school system's procedures (Doc. i).

DISCUSSION/CONCLUSIONS:

The IDEA requires that each public agency permit parents to inspect and review any educational records regarding their children that are "collected, maintained, or used by the agency," consistent with the requirements of the Family Educational Rights and Privacy Act (FERPA) (34 CFR §99.10 and 34 CFR §300.613). The public agency must comply with a request for access to the educational record without unnecessary delay, and before any meeting regarding an IEP, or any due process hearing or resolution session. However, in no case should the response be provided more than forty-five (45) days after the request has been made (34 CFR §300.613). Based on the Findings of Facts #1 - #7 above, the MSDE finds that the PGCPs did not respond to the complainant's request in a timely manner. Therefore, this office finds that a violation occurred with respect to the allegation.

CORRECTIVE ACTION/TIMELINE:

The MSDE requires the PGCPs to provide documentation by June 1, 2015 that it has provided the complainant with access to the student's educational record in response to his March 2, 2014 request.

TECHNICAL ASSISTANCE:

Technical assistance is available to the parties from Dr. Kathy Aux, Dispute Resolution Specialist, MSDE at (410) 767-7770.

Please be advised that the complainant and the PGCPs 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 public agencies must implement any Corrective Action consistent with the timeline requirements as reported in this Letter of Findings.

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Questions regarding the findings and conclusions 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 Free Appropriate Public Education (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 a due process complaint.

Sincerely,

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

MEF/am

c: Kevin W. Maxwell
Shawn Joseph
LaRhonda Owens
Kerry Morrison
Gail Viens
XXXXXXX
Dori Wilson
Sarah Spross
Anita Mandis
Kathy Aux