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State Superintendent of Schools

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July 24, 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: #15-088

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 June 8, 2015, the MSDE received a complaint from Mr. XXXXXXXXXXXXXXXX, 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 following allegations:

1. The PGCPS did not follow proper procedures when responding to the request made on April 20, 2015 to amend the student's educational record, in accordance with 34 CFR §§300.618 - .621.

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2. The PGCPS does not provide parents with the opportunity for a hearing to challenge information in educational records, in accordance with 34 CFR §§300.618 - .621.

INVESTIGATIVE PROCEDURES:

1. On June 9, 2015, Ms. Anita Mandis, Section Chief, Complaint Investigation Section, MSDE, conducted a telephone interview with the complainant to clarify the allegations 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 June 11, 2015, 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.
3. On June 18, 2015, the complainant provided the MSDE with the documents to be considered.
4. On June 30, 2015, Ms. Mandis requested additional information from the complainant and the school system staff. On the same date, the PGCPS provided the requested information.
5. On July 1, 2015, Ms. Mandis provided the complainant with the information provided by the PGCPS on June 30, 2015, and requested additional information from the complainant.
6. On July 6, 2015, Ms. Mandis independently verified with the PGCPS Office of Appeals the information that was provided to the complainant on July 1, 2015.
7. On July 21, 2015, the PGCPS provided the MSDE with additional information and documents.
8. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
 - a. Individualized Education Program (IEP), dated February 12, 2015;
 - b. Letter to the complainant from the PGCPS Central Office compliance staff, dated March 27, 2015;
 - c. Electronic mail (email) message from the complainant to the Chief Executive Officer, PGCPS, dated April 16, 2015;
 - d. Letter of Findings issued by the MSDE to the parties as a result of an investigation conducted of State complaint #15-057, dated April 27, 2015;

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- e. Email message from the PGCPS to the complainant, dated April 23, 2015;
- f. Letter to the complainant from the PGCPS Central Office compliance staff, dated April 29, 2015;
- g. Email message from the PGCPS Central Office compliance staff to the complainant, dated April 30, 2015;
- h. Letter to the Chief Executive Officer, PGCPS from the complainant, dated May 8, 2015;
- i. Email message and letter from the PGCPS Office of General Counsel to the complainant, dated May 19, 2015;
- j. Email message from the PGCPS to the MSDE, dated June 30, 2015;
- k. Email message from the MSDE to the complainant, dated July 1, 2015;
- l. PGCPS Administrative Procedure No. 5125 – *Individual Student School-Based Records* and
- m. Correspondence from the complainant alleging IDEA violations, received by the MSDE on June 8, 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. a).

FINDINGS OF FACTS:

1. On April 16, 2015, the complainant sent a request to the Chief Executive Officer, PGCPS, for information on how to obtain a hearing to dispute the school system's refusal to amend the student's educational record. This request was made following the school system's March 27, 2015 notice that it would not amend portions of the record that had been requested by the complainant on March 7, 201. In the March 27, 2015 correspondence, the complainant was also notified of his right to request a hearing to dispute the contents of the record¹ (Docs. b and c).
2. On April 20, 2015, the complainant sent a letter to the PGCPS Central Office compliance staff making another separate request for amendment of the student's educational record. This request was for amendment of the written summary of a February 12, 2015 IEP team meeting (Doc. e).

¹ This request was for amendment of the written summary of a September 3, 2013 IEP team meeting. As a result of an investigation of State complaint #15-057 that was filed by the complainant, this office identified a violation related to the school system's response not being given within a reasonable amount of time from the date of the complainant's request (Doc. d).

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3. On April 30, 2015, the PGCPs Central Office compliance staff responded to the complainant's April 20, 2015 request, agreeing to some of the requested changes and refusing to make others. However, in this correspondence, the PGCPs did not again provide the complainant with the information provided on March 27, 2015 about his right to request a hearing to dispute the content of the record (Docs. f and g).
4. On May 8, 2015, the complainant made a request to the Chief Executive Officer, PGCPs, for the procedures for obtaining a hearing in order to dispute information contained in the student's educational record (Doc. h).
5. On May 19, 2015, the PGCPs Office of General Counsel staff provided the complainant with a copy of the PGCPs Administrative Procedure No. 5125 governing the collection, maintenance, and dissemination of student educational records. This procedure states that a request to amend the record should be made to the school principal, who must issue a decision on the request in writing within seven (7) school days. The procedure further states that, if the matter is not resolved to the parent's satisfaction, the parent can make a written appeal to the "Zone or High School Consortium Executive Director," who will issue a decision within seven (7) school days. The procedure also states that this decision may be appealed to the Superintendent or designee, and that this decision may be appealed to the local Board of Education. If the parent is dissatisfied after accessing these levels of appeal, the parent may add a statement, which will be retained with the materials in question (Docs. e and i).
6. The copy of Administrative Procedure No. 5125 was sent to the complainant on May 19, 2015 with a cover letter explaining that the position of "Zone or High School Consortium Executive Director" no longer exists. The correspondence explains that the principal's decision may be appealed to the "Instructional Director; then to the Associate Superintendent; next to the Deputy Superintendent; and finally to the Office of Appeals, which serves as the Chief Executive Officer's designee." The letter states that "contact information for each of those individuals will be given to you at each level of appeal" (Docs. e and i).
7. The PGCPs Central Office compliance staff report that, when a parent inquires about a hearing with the principal of a nonpublic separate special education school, such as the one in which the student is placed, the principal contacts the PGCPs Nonpublic Office to arrange for the hearing to be conducted (Interview with the PGCPs Central Office compliance staff).
8. There was no information or documentation that the complainant contacted either the principal or the PGCPs Central Office compliance staff to obtain contact information to request a hearing from the Instructional Director following his receipt of the May 19, 2015 correspondence from the PGCPs Office of General Counsel. Therefore, on June 30, 2015, the MSDE staff requested contact information from the PGCPs for the

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complainant to request a hearing from the Instructional Director, and was provided with information for him to contact the PGCPS Office of Appeals (Doc. o).

9. On July 1, 2015, the MSDE staff provided the complainant with contact information for the PGCPS Office of Appeals, and requested that he provide the MSDE with feedback on the response he received once he had requested a hearing (Doc. k).
10. On July 6, 2015, the MSDE staff confirmed with the PGCPS Office of Appeals that parents can request a hearing to contest the content of student educational records through that office (Interview with staff from the PGCPS Office of Appeals and <http://www1.pgcps.org/appeals>).
11. To date, there is no information or documentation that the complainant has requested a hearing from the PGCPS Office of Appeals.

DISCUSSION/CONCLUSIONS:

Allegation #1

Response to April 20, 2015 Request to Amend the Record

A parent who believes that information in the student's educational record is inaccurate or misleading may request that the public agency amend the information. Upon receipt of such a request, the public agency must decide, within a reasonable period time of the receipt of the request, whether to amend the information. If the public agency refuses to amend the information, it must inform the parent of the refusal and advise the parent of the right to a hearing before school system personnel to challenge the information (34 CFR §§300.618 and .619). There is no indication that the public agency may be excused from continuing to provide this information, even when the parent was recently informed of that right with respect to a prior request for amendment of the record.

In this case, the complainant alleges that the PGCPS did not inform him of his right to a hearing to dispute the record in its April 30, 2015 correspondence refusing to make all of the amendments to the record that he had requested (Doc. m).

Based on the Findings of Facts #2 and #3, the MSDE finds that the PGCPS did not inform the complainant of his right to a hearing to dispute the record when refusing to amend portions of the record on April 30, 2015, as he had requested. Therefore, this office finds that a violation occurred with respect to the allegation.

Notwithstanding the violation, based on the Finding of Fact #1, the MSDE finds that the PGCPS had previously informed the complainant of his right to request a hearing following a refusal to amend the record in response to another request he made to amend the record the previous month. Based on the Finding of Fact #4, the MSDE finds that the complainant was aware of his

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right to request a hearing to dispute the record. Therefore, this office has determined that no corrective action is required to remediate the violation.

Allegation #2 Provision of the Opportunity for a Hearing to Challenge Information in Student Educational Records

When denying a parent's request to amend a student's educational record, the public agency must provide the parent with the opportunity for a hearing to challenge the decision. This hearing must be conducted according to procedures in the Family Educational Rights and Privacy Act (FERPA), which requires that the public agency provide the parent with a full and fair opportunity to present evidence relevant to the issues raised, and permit the parent to be represented at the hearing, at the parent's expense. The public agency must hold the hearing within a reasonable time after it has received the request for hearing from the parent, and must provide the parent with notice of the date, time, and place of the hearing, reasonably in advance of the hearing (34 CFR §§99.21 and .22, and 34 CFR §300.621).

The parent is not required to follow the procedures that are applicable to filing a due process complaint. The hearing may be conducted by any individual, including an official of the public agency, who does not have direct interest in the outcome of the hearing (Analysis of Comments and Changes to the IDEA regulations, Federal Register, Vol. 71, No. 156, pp. 46735-6, August 14, 2006).

In this case, the complainant states that the information provided to him by the PGCPs on May 19, 2015 "involves issue escalation through a typical organizational hierarchy," but that the procedure does not include a hearing (Doc. m).

Based on the Findings of Facts #5 - #11, the MSDE finds that there is information and documentation that the PGCPs provides parents with the right to appeal a decision to refuse to amend a student's educational record. The MSDE further finds that the fact that the school system provides parents with more than one level of appeal does not negate the fact that it gives parents the opportunity for a hearing to dispute the record. Therefore, this office does not find that a violation occurred with respect to the allegation.

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

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documentation, this office may leave its Findings and Conclusions intact, set forth additional Findings and Conclusions, or enter new Findings and Conclusions.

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
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Kathy Aux