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Ms. Rebecca Rider
Director of Special Education
Baltimore County Public Schools
The Jefferson Building
105 West Chesapeake Avenue
Towson, Maryland 21204

RE: XXXXX
Reference: #16-046

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 November 16, 2015, the MSDE received a complaint from Mr. XXXXXXXXX, hereafter, “the complainant,” on behalf of his son, the above-referenced student. In that correspondence, the complainant alleged that the BCPS violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to the student.

The MSDE investigated the allegation that the BCPS did not ensure the confidentiality of personally-identifiable information about the student, in accordance with 34 CFR §§300.610 and .611 and the Family Educational Rights and Privacy Act (FERPA), at 34 CFR part 99.

INVESTIGATIVE PROCEDURES:

1. On November 16, 2015, Mr. Kenneth Hudock, Family Support Services Specialist, MSDE contacted the complainant in response to the receipt of correspondence from him on November 11, 2015. Mr. Hudock clarified the allegation and informed the complainant of the need for him to provide a proposed remedy, which was received by the MSDE on the same date.

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2. On November 16, 2015, the MSDE sent a copy of the complaint, via facsimile, to Ms. Rebecca Rider, Director of Special Education, BCPS. 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, notified the BCPS of the allegation, and requested that the BCPS review the alleged violation.
3. On November 18, 2015, the complainant provided the MSDE with additional information.
4. On December 8, 2015, Ms. Anita Mandis, Section Chief, Complaint Investigation Section, MSDE requested documents from the BCPS. On the same date, the BCPS provided the MSDE with documents to consider.
5. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
 - a. Electronic mail (email) correspondence between the complainant and the school staff, dated between August 31, 2015 and October 24, 2015;
 - b. Individualized Education Program (IEP), dated November 12, 2015;
 - c. Email correspondence from the complainant to the MSDE, dated November 16, 2015; and
 - d. Email correspondence from the complainant to the MSDE, dated November 18, 2015.

BACKGROUND:

The student is fifteen (15) 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 XXXXXX XXXXXXXX (Docs. b and c).

During the period of time addressed by this investigation, the complainant participated in the education decision-making process for the student and was provided with written notice of the procedural safeguards (Doc. b).

FINDINGS OF FACTS:

1. On August 31, 2015, the complainant sent an electronic mail (email) message to the student's case manager, copying the student's IEP coordinator, and requesting information on how the student did in school that day (Doc. a).
2. On the same date, the case manager responded to the complainant that the student was doing well in school. However, instead of copying the IEP coordinator on his response, the case manager copied, in error, a social studies teacher at the school, who has a similar name and thus, a similar email address. The complainant brought this information to the

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- case manager's attention and the case manager apologized to the complainant for the error (Doc. a).
3. On October 21, 2015, the IEP coordinator sent the complainant an email message requesting a meeting to discuss how to address the difficulties the student was having in Spanish class. Among those copied on the email were a BCPS behavioral interventionist, the assistant principal, the case manager, the student's Spanish teacher, and the world language department chairperson for the school (Doc. a).
 4. On the same date, the complainant sent an email message to the principal complaining that information was erroneously shared with a science teacher at another school as follows:
 - The complainant sent an email message to the IEP coordinator complaining that the IEP coordinator had shared information about the student with so many other school staff and indicating that he was no longer willing to communicate with the IEP coordinator.
 - The complainant intended to copy the assistant principal on his email message, but instead copied a science teacher at another school, who has a similar name, and thus, similar email address.
 - The complainant indicated to the principal that he was given the erroneous email address from the principal's secretary.
 - The IEP coordinator, when responding to the complainant, included all of those copied on the complainant's email, including the science teacher from another school (Doc. a).
 5. On October 23, 2015, the principal informed the complainant that steps had been taken to ensure that a breach of confidentiality does not recur (Doc. a).
 6. On October 24, 2015, the complainant reported to the principal that ensuring the destruction of the email message received by the science teacher from another school and addressing the procedures for ensuring confidentiality of records with the school staff was not sufficient to address the matter (Doc. a).
 7. In a November 16, 2015 email message to the MSDE staff, the complainant has indicated that reimbursement of \$3,600.00¹ in legal fees incurred in an unrelated dispute with the school system would sufficiently address the breach of confidentiality (Doc. c).

¹ The complainant amended this amount to \$3,102.16 in a subsequent email sent to the MSDE on November 18, 2015 (Doc. d).

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8. There is no information or documentation that the disclosure of the student personally-identifiable information without parental consent has negatively impacted the student's ability to benefit from the education program (Docs. c and d).

DISCUSSION/CONCLUSIONS:

Parental consent must be obtained before personally identifiable information is disclosed to parties, unless disclosure is specifically authorized without parental consent by the Family Educational Rights and Privacy Act (FERPA) (34 CFR §99.30).

Pursuant to FERPA, parental consent is not required to disclose information to other school officials who have been determined to have legitimate educational interests in the information (34 CFR §99.31). For example, the IDEA requires that all school staff with responsibility for implementation of the IEP be made aware of the requirements of the student's education program in order to ensure that the IEP services are provided (34 CFR §300.323).

However, student records may only be disclosed without parental consent to other schools or school systems if the student seeks or intends to enroll in the school or school system, and where the disclosure is for the purpose of the student's enrollment and transfer (34 CFR §99.31).

Based on Findings of Facts #1 - #7 above, the MSDE finds that personally-identifiable information about the student to his teachers, service providers, and their supervisors, was permissible without parental consent. However, based on those Findings of Facts, the MSDE also finds that the student's personally-identifiable information was shared, in error and without parental consent, with school staff who were not teachers of the student and therefore, did not have an interest in the information. Therefore, this office finds that a violation occurred.

Notwithstanding the violation and the complainant's request for monetary compensation for the violation, based on the Findings of Facts #5 - #8, the MSDE finds that the violation did not negatively impact the student's ability to benefit from the education program and that steps have been taken to remediate the violation and to ensure that it does not recur. Therefore, no additional corrective action is required.

TIMELINE:

Please be advised that both the complainant and the BCPS 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.

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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.

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 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: S. Dallas Dance
Conya Bailey
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Dori Wilson
Anita Mandis