



Lillian M. Lowery, Ed.D.
State Superintendent of Schools

200 West Baltimore Street • Baltimore, MD 21201 • 410-767-0100 • 410-333-6442 TTY/TDD • MarylandPublicSchools.org

March 1, 2013

XXX
XXX
XXX
XXX

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: #13-030

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 January 2, 2013, the MSDE received a complaint from Mr. XXXXXXXXX and Mrs. XXXXXXXXXXXX, hereafter, “the complainants,” on behalf of their son. In that correspondence, the complainants 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 following allegations:

1. The PGCPS has not ensured the protection of confidentiality of the student’s personally identifiable information since the start of the 2012-2013 school year, in accordance with 34 CFR §§300.611 - .625;
2. The PGCPS has not ensured that the student has been provided with the accommodations and supplementary aids and services required by the Individualized Education Program (IEP) since November 14, 2012,¹ in accordance with 34 CFR §300.101;

¹ On November 13, 2012, this allegation was resolved through a mediated agreement between the complainants and the PGCPS. As a result, on January 14, 2013, this office informed the complainants that this office could only investigate the time period that had not been resolved through mediation, in accordance with 34 CFR §300.152.

XXX

XXX

Mrs. Joan Rothgeb

March 1, 2013

Page 2

3. The PGCPs did not ensure that the complainants were provided with accessible copies of each assessment, report, data chart, draft IEP, or other document the IEP team planned to discuss at the November 26, 2012 and the December 5, 2012 IEP team meetings at least five (5) business days before each scheduled meeting, in accordance with Md. Code Ann., Educ., §8-405 (2010) and COMAR 13A.05.01.07; and
4. The PGCPs did not ensure that the complainants were provided with reports of the student's progress toward achieving the annual IEP goals during the first (1st) quarter of the 2012-2013 school year, in accordance with 34 CFR §300.320.

INVESTIGATIVE PROCEDURES:

1. Ms. Kathy Stump, Education Program Specialist, MSDE, was assigned to investigate the complaint.
2. On January 3, 2013, the MSDE sent a copy of the complaint, via facsimile, to Mrs. Joan Rothgeb, Director of Special Education, PGCPs; Ms. Gail Viens, Deputy General Counsel, PGCPs; and Ms. Kerry Morrison, Special Education Instructional Specialist, PGCPs.
3. On January 8, 2013, Ms. Stump conducted a telephone interview with the student's mother and clarified the allegations to be investigated.
4. On January 14, 2013, the MSDE sent correspondence to the complainants that acknowledged receipt of the complaint and identified the allegations subject to this investigation. On the same date, the MSDE notified Mrs. Rothgeb of the allegations and requested that her office review the alleged violations.
5. On January 23, 2013, the MSDE requested that the PGCPs provide documentation from the student's educational record.
6. On January 24, 2013, the MSDE received an amended complaint from the complainants, via electronic mail (e-mail).
7. On January 24 and 25, 2013, the complainants provided the MSDE with e-mail correspondence that they wished to have considered during the course of the investigation.
8. On January 25, 2013, the MSDE sent correspondence to the complainants that acknowledged receipt of the amended complaint and identified the additional allegation subject to this investigation. On the same date, the MSDE notified Mrs. Rothgeb of the additional allegation and requested that her office review the alleged violation.

XXX

XXX

Mrs. Joan Rothgeb

March 1, 2013

Page 2

9. On January 28, 2013, the MSDE sent the PGCPs copies of the e-mail correspondence received from the complainant on January 24, 2013.
10. On February 4, 2013, Ms. Stump and Ms. Koliwe Moyo, Education Program Specialist, MSDE, conducted a site visit at XXXXXX XXXX (XXXXXX HS) to review the student's educational record, and interviewed the following PGCPs personnel:
 - a. Ms. XXXXXXXXXXXX, Assistant Principal, XXXXX;
 - b. Ms. Peggy Besanko, Special Education Instructional Specialist, PGCPs;
 - c. Ms. XXXXXXXXXXXX, General Education Reading Teacher, XXXXX;
 - d. Ms. XXXXXXXXXXXX, Case Manager, XXXXX;
 - e. Mr. XXXXXXXXXXXX, Special Education Teacher, XXXXX;
 - f. Ms. XXXXXXXX, IEP Team Chairperson, XXXXXXXX; and
 - g. Mr. XXXXXXXX, Assistant Principal, XXXXX.

Ms. Morrison attended the site visit as a representative of the PGCPs and to provide information on the PGCPs policies and procedures, as needed.

11. On February 12, 2013, the MSDE requested additional documentation from the PGCPs, and the complainants, via e-mail.
12. On February 13 and 14, 2013, the complainants provided the MSDE with the requested documentation, via e-mail.
13. On February 15, 2013, the MSDE requested additional documentation from the PGCPs, via e-mail.
14. On February 20, 2013, the PGCPs provided the MSDE with additional documentation for consideration, via e-mail.
15. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
 - a. Correspondence from the complainants to the MSDE, received on January 2 and 24, 2013;
 - b. IEP and meeting notice, dated November 8, 2012;
 - c. Prior Written Notice form, dated November 8, 2012;
 - d. Maryland Office of Administrative Hearings Special Education Mediation Agreement, dated November 13, 2012;
 - e. IEP team meeting notice for the November 26, 2012 IEP team meeting;
 - f. Individual Student Performance Task Recording Sheet forms, dated November 27 and 28, 2012;
 - g. Prior Written Notice form, dated December 5, 2012;

XXX

XXX

Mrs. Joan Rothgeb

March 1, 2013

Page 4

- h. E-mail correspondence between the student's mother and school staff, dated between December 6 and 21, 2012, provided by the complainants;
- i. IEP progress reports for the 2012-2013 school year; and
- j. E-mail correspondence between school staff and the student's mother, dated between August 31, 2012 and January 26, 2013, provided by school staff.

BACKGROUND:

The student is fifteen (15) years old and is identified as a student with an Other Health Impairment under the IDEA, related to a diagnosis of Attention Deficit/Hyperactivity Disorder. He attends XXXX XXXXX (XXXXXX), where he receives special education and related services. During the period of time addressed by this investigation, the complainants were provided with written notice of the procedural safeguards (Docs. a-c, g, h, and j).

ALLEGATION #1:

MAINTAINING CONFIDENTIALITY OF THE STUDENT'S PERSONALLY IDENTIFIABLE INFORMATION

Findings of Facts:

1. On December 20, 2012, the student's mother sent school staff an e-mail expressing concern that one of the student's teachers "addressed [the student] in front of his class as a 'special ed student' while she removed him to the special ed office." The e-mail further expresses concern that the teacher routinely discusses the student's accommodations in front of his peers (Doc. h).
2. On December 21, 2012, the assistant principal sent the student's mother an e-mail stating that the school administration would investigate her concerns and that a meeting would be convened between the complainants and school staff in January 2013 to discuss those concerns and other matters (Doc. h).
3. There is no documentation that school staff have conducted an investigation or have met with the complainants to address the concerns of the student's mother (Review of educational record and interview with school staff).

Discussion/Conclusions:

Each public agency must ensure the confidentiality of students' personally identifiable data, information, and records that are collected or maintained by the agency (34 CFR §300.610 and COMAR 13A.05.01.11F). Parental consent must be obtained before personally identifiable information is disclosed to parties, unless the information is contained in educational records and the disclosure is authorized without parental consent by the Family Educational Rights and Privacy Act (FERPA) (34 CFR §99.30).

XXX

XXX

Mrs. Joan Rothgeb

March 1, 2013

Page 5

Disclosure means to permit access to or the release, transfer, or other communication of personally identifiable information contained in education records by any means to any party except the party identified as the party that provided or created the record. This includes disclosing information orally, in writing, or by electronic means (34 CFR §99.3).

Based on the Findings of Facts #1 and #2, the MSDE finds that once the issue was raised, school staff had an obligation, which they have acknowledged, to ensure that the confidentiality of the student's information had been maintained. However, based on the Finding of Fact #3, the MSDE finds that there is no documentation that school staff took the steps necessary to meet this obligation. Therefore, the MSDE finds that a violation has occurred regarding this allegation.

ALLEGATION #2: **PROVISION OF ACCOMMODATIONS AND SUPPLEMENTARY AIDS AND SERVICES SINCE NOVEMBER 14, 2012**

Findings of Facts:

4. The IEP in effect since November 14, 2012 requires that the student be provided with instructional and testing accommodations, including the use of visual cues, provision of teacher's notes, monitoring of test responses, use of calculation devices, use of spelling and grammar devices, use of visual and graphic organizers, extended time to complete assignments and assessments, frequent breaks, and reduced distractions to the student (Doc. b).
5. The IEP also requires that the student be provided with supplementary aids and services, including the use of a portable, electronic note-taker with text-to-speech functioning; daily progress reports; provision of a set of textbooks for use in the home, an adjusted workload, checking for understanding, repetition of directions, use of a computer for multi-paragraph writing assignments, and consultative services between the Assistive Technology consultant and the student's IEP team (Doc. b).
6. The following document that the student has been provided with the accommodations and supplementary aids and services required by the IEP:
 - a. IEP progress reports for the 2012-2013 school year;
 - b. E-mail correspondence between the student's mother and school staff;
 - c. Individual Student Performance Task Recording forms; and
 - d. On-site review of student work samples (Docs. f, h, i, and j).

XXX

XXX

Mrs. Joan Rothgeb

March 1, 2013

Page 6

Discussion/Conclusions:

The public agency is required to ensure that the student is provided with the special education and related services required by the IEP (34 CFR §300.101). Based on the Findings of Facts #4-#6, the MSDE finds that there is documentation that the student has been provided with the accommodations and supplementary aids and services required by his IEP. Therefore, the MSDE finds no violation regarding this allegation.

ALLEGATION #3: **PROVISION OF DOCUMENTS TO BE CONSIDERED AT
LEAST FIVE DAYS PRIOR TO THE NOVEMBER 26, 2012
AND DECEMBER 5, 2012 IEP TEAM MEETINGS**

Findings of Facts:

7. An IEP team meeting was held on November 8, 2012, November 26, 2012, and December 5, 2012 in order to complete an annual review of the student's program (Docs. b, c, e, and g).
8. On November 2, 2012, school staff sent a proposed IEP to the student's mother, via e-mail, to be considered on November 8, 2012, the first day of the meeting. The team did not complete the annual review on November 8, 2012 and agreed to continue the meeting on November 26, 2012 (Docs. c and j).
9. On November 13, 2012, the complainants and school staff participated in mediation and reached an agreement to resolve a dispute about the student's educational program. The agreement indicates that the IEP team would reconvene on November 26, 2012 to discuss a number of specified changes to the student's IEP (Doc. d).
10. On November 26, 2012, the IEP team reconvened to continue the annual review meeting. The documentation indicates that the team did not complete the annual review on that date (Doc. e).
11. There is no documentation that, prior to November 26, 2012, school staff developed a proposed IEP (review of student's educational record and interview with school staff).
12. On November 29, 2012, school staff provided the complainants with a "draft IEP." There is no documentation regarding whether the "draft IEP" was intended to serve as prior written notice of the decisions made by the IEP team from the previous two meeting dates or if it was intended to serve as a proposed IEP to be considered at the December 5, 2012 meeting (Doc. j).
13. On December 5, 2012, the IEP team reconvened, concluded the annual review, and made revisions to the student's IEP (Doc. g and review of educational record).

XXX

XXX

Mrs. Joan Rothgeb

March 1, 2013

Page 7

Discussion/Conclusions:

At least five (5) business days before a scheduled IEP team meeting, the student's parent must receive an accessible copy of each assessment, report, data chart, draft IEP, if applicable, or other document the team plans to discuss at the meeting (Md. Code Ann., Educ., §8-405 [2010] and COMAR 13A.05.01.07).

In this case, the complainants allege that they were not provided with a copy of a proposed IEP prior to the November 26, 2012 and the December 5, 2012 IEP team meetings (Doc. a and interview with the student's mother).

Based on the Findings of Facts #7-#11, the MSDE finds that school staff provided the complainants with a proposed IEP within five (5) business days prior to the November 8, 2012 IEP team meeting date and there is no documentation that a proposed IEP was developed prior to the November 26, 2012 IEP meeting date. Therefore, the MSDE finds no violation regarding this aspect of the allegation.

However, based on the Findings of Facts #12 and #13, the MSDE finds that school staff provided the complainants with a "draft IEP" four (4) business days prior to the December 5, 2012 IEP team meeting but there is no documentation regarding the purpose of the document. Therefore, the MSDE finds a violation regarding this aspect of the allegation.

ALLEGATION #4: PROVISION OF IEP PROGRESS REPORTS FOR THE FIRST (1ST) QUARTER OF THE 2012-2013 SCHOOL YEAR

Findings of Facts:

14. The IEP states that the complainants will be provided with written reports of the student's progress toward achieving the annual IEP goals on a quarterly basis (Doc. b).
15. On November 16, 2012, the first (1st) quarter IEP progress reports were entered into the IEP document (Doc. b).
16. On December 5, 2012, the IEP team concluded the annual review meeting. The documentation of that meeting indicates that a copy of the final IEP would be sent home to the complainants within 5 days (Doc. g).
17. On December 11, 2012, school staff e-mailed a copy of the finalized IEP to the complainants. The IEP contained the reports of the student's progress toward achieving the annual goals (Doc. j).

XXX

XXX

Mrs. Joan Rothgeb

March 1, 2013

Page 8

Discussion/Conclusions:

The IEP must include, among other things, a description of how the student's progress toward achieving the annual goals will be measured and when reports will be made of the student's progress to the parents (34 CFR §300.320). The public agency must give the parent a copy of the student's IEP at no cost to the parent (34 CFR §300.322).

Based on the Findings of Facts #14-#17, the MSDE finds that there is documentation that the complainants were provided with a written report of the student's progress toward achieving the annual IEP goals for the first (1st) quarter of the 2012-2013 school year. Therefore, the MSDE finds no violation regarding the allegation.

CORRECTIVE ACTIONS/TIMELINES:

Student-Specific

The MSDE requires the PGCPs to provide documentation by May 1, 2013, that school staff have taken the following actions:

1. Completed the investigation into the concerns of the complainants regarding the confidentiality of the student's personally identifiable information; and
2. If a breach of confidentiality is found, conducted an IEP team meeting to determine whether the student's ability to receive educational benefit from his program was adversely impacted by the breach. If the team determines an adverse impact, then the team needs to determine the nature and amount of *compensatory services*² or other remedy necessary to redress the violation.

The PGCPs must provide the complainants with proper written notice of the determinations made at the IEP team meeting, if conducted, including a written explanation of the basis for the determinations, as required by 34 CFR §300.503. If the complainants disagree with the IEP team's determinations, they maintain the right to request mediation or file a due process complaint, in accordance with the IDEA.

School-Based

The MSDE requires the PGCPs to provide documentation by the end of the 2012-2013 school year, of the steps it has taken to determine if the violation related to providing parents with copies of

² 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).

XXX

XXX

Mrs. Joan Rothgeb

March 1, 2013

Page 9

documents at least five (5) business days prior to IEP team meetings is unique to this case or if it represents a pattern of noncompliance at XXXXXXXX HS.

Specifically, the school system is required to conduct a review of student records, data, or other relevant information to determine if the regulatory requirement is being implemented and must provide documentation of the results of this review to the MSDE. If the school system reports compliance with the requirement, the MSDE staff will verify compliance with the determinations found in the initial report.

If the school system determines that the regulatory requirements are not being implemented, the school system must identify the actions that will be taken to ensure that the violations do not recur. The school system must submit a follow-up report to document correction within ninety (90) days of the initial date that the school system determines non-compliance.

Upon receipt of this report, the MSDE will re-verify the data to ensure continued compliance with the regulatory requirements, consistent with the requirements of the United States Department of Education, Office of Special Education Programs. Additionally, the findings in the Letter of Findings will be shared with the MSDE's Office of Quality Assurance and Monitoring for Continuous Improvement for its consideration during present or future monitoring of the PGCPS.

Documentation of all corrective action taken is to be submitted to this office to: Attention: Chief, Complaint Investigation/Due Process 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.

Please be advised that the complainants 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.

XXX

XXX

Mrs. Joan Rothgeb

March 1, 2013

Page 10

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 Free Appropriate Public Education 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:ks

cc : Alvin Crawley
Duane Arbogast
Gail Viens
LaRhonda Owens
Kerry Morrison
XXXXXXXXXXXX
Martha J. Arthur
Dori Wilson
Anita Mandis
Kathy Stump