



Karen B. Salmon, Ph.D.
State Superintendent of Schools

April 26, 2021

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Ms. Trinell Bowman
Associate Superintendent - Special Education
Prince George's County Public Schools
John Carroll Elementary School
1400 Nalley Terrace
Landover, Maryland 20785

RE: XXXXX
Reference: #21-059

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 February 19, 2021, the MSDE received correspondence 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 allegation that the PGCPS has not ensured access to the educational record in response to a request made on November 10, 2020, in accordance with 34 CFR §300.613.

While there is a sixty (60) day timeline for completing the State complaint investigation, the parties were notified on April 20, 2021, in writing, that the timeline for completion was being extended in order to ensure that that the complainant understood the process and to confirm that he did not have any additional documentation that he wished to have considered in this complaint investigation. This correspondence is the report of the final results of this MSDE investigation.

BACKGROUND:

The student is fifteen (15) years old, is identified as a student with Autism under the IDEA, and has an Individualized Education Program (IEP) that requires the provision of special education and related services.

The student is placed by the PGCPS at XXXXXXXXXXXXXXXXXXXX, a nonpublic, separate, special education school, which he attended from July 1, 2019 until the Statewide closure of school buildings as a result of the national COVID-19 pandemic.

FINDINGS OF FACTS:

Request for PGCPS Emails

November 10, 2020

1. An electronic mail message (email), dated November 10, 2020, documents that, on that date, the complainant sent a letter to the PGCPS requesting access to all emails about the family which were both received and sent by the PGCPS Compliance Specialist assigned to work with the family. The complainant requested these emails for the period of September 9, 2020 to November 9, 2020. He stated that he was making the request for access to the documents pursuant to the IDEA, the Family Educational Rights and Privacy Act (FERPA), and other federal and State laws, including “the Maryland Public Information Act (MPIA), General Provisions Article §§4-101 through 4-362, Annotated Code of Maryland.”
2. An email from the PGCPS to the complainant, dated November 10, 2020, documents that, on the same date as the request, the PGCPS responded that it would share the MPIA request with the PGCPS Office of General Counsel, who would process the request.
3. An email from the PGCPS to the complainant, dated December 18, 2020, documents that on that date, the school system staff provided the complainant with a letter forwarding 114 emails in response to his November 10, 2020 request. The letter, from PGCPS Office of General Counsel, states that the emails were retrieved from the PGCPS Compliance Specialist’s email account by the PGCPS Information Technology Department, and that the documents provided include attachments to the emails provided.

Requests for MSDE Emails

November 10, 2020

4. An email from the complainant to the MSDE, dated November 10, 2020, documents that, on that date, the complainant requested emails between the MSDE staff and a PGCPS

Compliance Specialist who has worked with the family. The complainant requested these emails for the period of June 10, 2020 to July 1, 2020.

5. There is documentation that, on November 23, 2020, the MSDE provided the complainant with copies of the documents he requested on November 10, 2020.

November 20, 2020

6. An email from the complainant to the MSDE, dated November 20, 2020, documents that, on that date, the complainant requested emails between the MSDE staff and the PGCPs staff from July 2, 2020 to November 19, 2020.
7. There is documentation that, on January 4, 2021, the MSDE provided the complainant with copies of the documents he requested on November 20, 2020.

Comparison of Emails Provided by PGCPs and MSDE

8. The MSDE provided, to the complainant, emails which documented that, on January 8, 2021 and February 5, 2021, IEP team meetings were held to address parent concerns and the completion of corrective actions required as a result of the MSDE's investigations of the complainant's State complaints #20-137, #21-028, and #21-030.
9. The complainant provided copies of the MSDE emails related to the investigation of his State complaints #21-014, #21-028, and #21-030 as well as to the completion of corrective actions required as a result of the investigation of his State complaints #20-137 and #21-001, which were provided to him by the MSDE, but not the PGCPs, in response to his requests.
10. The PGCPs reports that those documents were missed when the PGCPs Information Technology Department pulled emails from the PGCPs Compliance Specialist's email account because the subject lines on the emails contained the numbers of the State complaint investigations and did not identify the family by name.

DISCUSSION/CONCLUSIONS:

In promulgating the IDEA regulations, the United States Department of Education explained that the FERPA requirements with respect to parental access to education records apply to the IDEA (*Federal Register*, Vol. 71, No. 156, August 14, 2006, p. 46736). The FERPA provides parents with the right to inspect and review the student's education records. It requires that the public agency comply with a request by the parent within a reasonable period of time, but not more than forty-five (45) days after the request is received (34 CFR §99.10).

In addition to this FERPA requirement, the IDEA requires a public agency to permit parents to inspect and review the education record without delay and before any meeting regarding an IEP (34 CFR §300.613). In addition to the right of parents of students with disabilities to access to

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education records, the MPIO gives the public the right to access government records without unnecessary cost and delay (Md. General Provisions Code Ann. §§4-201 and 4-311).

Based on the Findings of Facts #1 - #10, while the MSDE finds that the PGCPS responded to the request for records in a timely manner, not all of the documents requested by the complainant were provided by the school system due to the narrow nature of the defined search utilized by the PGCPS Information Technology Department when seeking those emails, in accordance with 34 CFR §.300.613. Therefore, this office finds that a violation occurred.

Notwithstanding the violation, based on those Findings of Facts, this office finds that the complainant was provided with the requested documents through a separate request made to the MSDE, and that those records were provided in a timely manner and prior to IEP team meetings covering the subject of those documents, in accordance with 34 CFR §.300.613.

Therefore, this office finds that the violation did not impact the complainant's ability to participate in those IEP team meetings, and that no student-specific corrective action is required to remediate the violation.

CORRECTIVE ACTION/TIMELINES:

The IDEA requires that State complaint procedures include those for effective implementation of the decisions made as a result of a State complaint investigation, including technical assistance activities, negotiations, and corrective actions to achieve compliance (34 CFR §300.152). Accordingly, the MSDE requires the public agency to provide documentation of the completion of the corrective actions listed below¹

This office will follow up with the public agency to ensure that it completes the required action consistent with the MSDE Special Education State Complaint Resolution Procedures. If the public agency anticipates that the timeframe below may not be met, or if any of the parties seeks technical assistance, they should contact Dr. Nancy Birenbaum, Compliance Specialist, Family Support and Dispute Resolution Branch, MSDE, to ensure the effective implementation of the action.² Dr. Birenbaum can be reached at (410) 767-7770 and nancy.birenbaum@maryland.gov.

The MSDE requires that the PGCPS provide documentation of the steps taken to ensure that all searches for emails requested by the complainant include those with headings that reference only State complaint numbers.

¹ The OSEP states that the public agency must correct noncompliance in a timely manner, which is as soon as possible, but not later than one (1) year from the date of identification of the noncompliance. The OSEP has indicated that, in some circumstances, providing the remedy could take more than one (1) year to complete. If noncompliance is not corrected in a timely manner, the MSDE is required to provide technical assistance to the public agency, and take tiered enforcement action, involving progressive steps that could result in the redirecting, targeting, or withholding of funds, as appropriate.

² The MSDE will notify the Directors of Special Education of any corrective action that has not been completed within the required timelines.

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As of the date of this correspondence, this Letter of Findings is considered final. This office will not reconsider the conclusions reached in this Letter of Findings unless new, previously unavailable documentation is submitted and received by this office within fifteen (15) days of the date of this correspondence. The new documentation must support a written request for reconsideration, and the written request must include a compelling reason for why the documentation was not made available during the investigation. Pending this office's decision on a request for reconsideration, the public agency must implement any corrective actions within the timelines reported in this Letter of Findings.

The parties 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 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 Early Intervention/
Special Education Services

c: Monica Goldson
Barbara Vandyke
Keith Marston
Gail Viens
Dori Wilson
Anita Mandis