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July 3, 2017

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Ms. Trinell Bowman
Executive Director
Department of Special Education
Prince George's County Public Schools
John Carroll Elementary School
1400 Nalley Terrace
Landover, Maryland 20785

RE: XXXXX
Reference: #17-158

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 June 16, 2017, 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 allegation that the PGCPS did not provide an opportunity for a hearing to challenge information in the student’s educational record within a reasonable time after receiving a June 1, 2017 request for a hearing, in accordance with 34 CFR §99.22 and §§300.619 and .612.

INVESTIGATIVE PROCEDURES:

1. On June 19, 2017, the MSDE sent a copy of the complaint, via facsimile, to Ms. Trinell Bowman, Executive Director, Department of Special Education, PGCPS.
2. On June 19, 2017, 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 June 22, 2017, the PGCPS provided the MSDE with information and documentation.
4. On June 22, 2017, the MSDE requested additional information and documentation from the PGCPS.
5. On June 26, 2017, the PGCPS provided the MSDE with the requested information and documents. On the same date, the complainant provided the MSDE with additional documentation.
6. On June 26, 2017, the MSDE requested additional documentation from both the complainant and the PGCPS.
7. On June 28 and 30, 2017, Ms. Anita Mandis, Section Chief, Complaint Investigation Section MSDE, conducted telephone interviews with the complainant.
8. On June 28, 29, and 30, 2017, the complainant provided the MSDE with documentation.
9. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
 - a. PGCPS Administrative Procedure 5125, dated January 1, 2009;
 - b. Correspondence from the complainant to the PGCPS, dated March 7, 2014;
 - c. Correspondence from the PGCPS to the complainant, dated March 27, 2014;
 - d. Correspondence from the PGCPS to the complainant, dated May 19, 2015;
 - e. PGCPS Administrative Procedure 5134, dated June 1, 2016;
 - f. Letter from the complainant to the school staff, dated May 19, 2017;
 - g. Electronic mail messages between the complainant and the school staff, dated between May 19, 2017 and May 31, 2017;
 - h. Individualized Education Program (IEP), dated May 22, 2017;

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- i. Letter from the complainant to the school staff, dated June 1, 2017;
- j. Correspondence from the complainant alleging a violation of the IDEA, received by the MSDE on June 16, 2017;
- k. Correspondence from the complainant to the MSDE forwarding a June 20, 2017 letter from him to the PGCPS, which was received by the MSDE on June 26, 2017;
- l. Correspondence from the PGCPS to the complainant, dated June 26, 2017;
- m. Letter of Findings issued in State complaint #15-088; and
- n. Letter from the complainant to the PGCPS, dated June 29, 2017.

BACKGROUND:

The student is 12 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 The XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX, a nonpublic, separate, special education school, where he is placed by the PGCPS (Docs. h and j).

On July 24, 2015, the MSDE issued a Letter of Findings as a result of the investigation of a previous State complaint filed by the complainant. In that State complaint, it was alleged that the PGCPS did not follow proper procedures when responding to a request for amendment of the documentation of a February 12, 2015 Individualized Education Program (IEP) team meeting, and that the PGCPS does not provide parents with the opportunity for a hearing to challenge information in educational records (Doc. m).

As a result of the investigation, the MSDE found that the PGCPS had procedures in place for providing a hearing to challenge information in educational records, but that it did not inform the complainant of his right to a hearing to dispute the record when refusing to amend portions of the record of the February 12, 2015 IEP team meeting (Doc. m).

Notwithstanding the violation, the MSDE found that the complainant had previously been informed of his right to request a hearing following the refusal of a previous request to amend the record. Because this office found that the complainant was aware of his right to request a hearing when his request to amend the documentation of the February 12, 2015 IEP team meeting was refused, no corrective action was required (Doc. m).

FINDINGS OF FACTS:

1. On June 1, 2017, the complainant sent correspondence to the principal requesting a hearing to challenge the contents of both a September 6, 2013 Prior Written Notice (PWN) document and a February 22, 2017 IEP, indicating that they contain inaccurate and misleading information (Doc. i).

2. The following actions were taken prior to the June 1, 2017 request for hearing:
 - a. On March 7, 2014, the complaint requested amendment of the PWN that was generated following a September 4, 2013 IEP team meeting, asserting that information about the IEP team's discussion was inaccurate (Doc. b).
 - b. On March 27, 2014, the PGCPS staff denied the request for amendment and notified the complainant of his right to request a hearing to dispute the content of the record. The notice did not include a description of the procedures for obtaining the hearing (Doc. c).
 - c. On May 19, 2017, the complainant requested amendment of information in the student's February 22, 2017 IEP, asserting that information about the parental input was inaccurate (Docs. f and g).
 - d. On May 26, 2017, the school staff provided the complainant with a revised IEP (Doc. g).
 - e. On May 30, 2017, the complainant notified the school staff that the amendments that were made to the IEP were not sufficient to ensure that the document accurately reflects what occurred at the IEP team meeting (Doc. g).
 - f. On May 31, 2017, the school staff denied the complainant's request for additional amendments and informed him of his right to a hearing to dispute the accuracy of the document. The notice did not include a description of the procedures for obtaining the hearing (Doc. g).
3. On June 20, 2017, during the course of this investigation, the complainant made a request for twenty-two amendments to be made to the PWN document for the February 22, 2017 IEP team meeting. The PGCPS has not yet responded to this request (Doc. k).
4. On June 26, 2017, the PGCPS staff provided the complainant with a response to his June 1, 2017 request for hearing and a copy of the PGCPS Administrative Procedure 5134. In that response, the PGCPS staff informed the complainant that, in accordance with the PGCPS Administrative Procedure 5134, a parent may appeal a principal's decision to deny a request to amend the record to the Area Superintendent. The appeal must be made within five school days of the principal's decision to deny the request for

amendment. The response from the PGCPs staff includes information on how to contact the Area Superintendent to request the hearing ¹ (Docs. l and e).

5. No information or documentation has been provided that a hearing has been scheduled yet in response to the complainant's request (Doc. n).

DISCUSSION/CONCLUSIONS:

The United States Department of Education, Family Policy Compliance Office (FPCO), which enforces the Family Educational Rights and Privacy Act (FERPA), has explained that FERPA only allows parents to challenge facts that are inaccurately recorded. It does not permit a parent to challenge a grade, evaluation, or opinion about a student (*Letter to Anonymous*, 107 LRP 20021 [FPCO 2007]). The FPCO has declined to investigate complaints under FERPA when the requests for amendment of the record have related to substantive or administrative decisions made by school officials, holding that FERPA's amendment provisions do not apply to such records (*Letter to Anonymous*, 116 LRP 41894 [FPCO 2016], *Letter to Moody*, 113 LRP 9505 [FPCO 2013]).

Therefore, the FPCO indicates that the parent should clearly identify the part of the record they want changed and specify why it should be changed. If the school decides not to amend the record as requested by the parent, the school must notify the parent of the decision and the right to a hearing regarding the request, **as well as the procedures for obtaining a hearing** [Emphasis added] (<http://familypolicy.ed.gov>).

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 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 [Emphasis added] (34 CFR §§99.21 and .22, and 34 CFR §300.621).

The parent is not required to follow the procedures that are applicable to requesting a due process hearing under the IDEA. Additionally, 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).

¹ On May 19, 2015, the complainant was provided with the procedures for obtaining a hearing to dispute information in the educational record. However, the information provided to the complainant at that time did not include a time limit for requesting a hearing following denial of a request for amendment (Docs. a and d).

Based on the Findings of Facts #1 - #5, the MSDE finds that the complainant was not provided with the procedures for obtaining a hearing until after the time period to request a hearing under the PGCPS' procedures was expired. Therefore, this office finds that the school system's response to the request for a hearing was not timely, and that a violation occurred.

CORRECTIVE ACTIONS/TIMELINES:

Student Specific

The MSDE requires the PGCPS to provide documentation by August 1, 2017 that it has provided the complainant with a hearing before the Area Superintendent regarding the accuracy of documentation of both the September 4, 2013 IEP team meeting and the February 22, 2017 IEP team meeting.

System-Based

The MSDE further requires that the school system to provide documentation by September 1, 2017 of the steps taken to ensure that parents are provided with the procedures for obtaining a hearing, including information on the timelines for requesting a hearing, with any denial of a request to amend a student's educational record.

Documentation of all corrective action taken is to be submitted to this office to: Attention: Chief, Family Support and Dispute Resolution Branch, Division of Special Education/Early Intervention Services, MSDE.

TECHNICAL ASSISTANCE:

Technical assistance is available to the parties by contacting Ms. Bonnie Preis, Compliance Consultant, Family Support and Dispute Resolution Branch, MSDE at (410) 767-7770.

Please be advised that the PGCPS and the complainant have the right to submit additional written documentation to this office within fifteen (15) days of the date of this letter if they disagree with the findings of fact 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 within the timelines 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
Gwendolyn Mason
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