



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

April 18, 2018

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Suite 508
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Mr. Philip A. Lynch
Director of Special Education Services
Montgomery County Public Schools
850 Hungerford Drive, Room 230
Rockville, Maryland 20850

RE: XXXXX
Reference: #18-102

Dear Parties:

The Maryland State Department of Education, Division of Special Education/Early Intervention Services (MSDE), 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 February 26, 2018, the MSDE received a complaint from Mr. Wayne Steedman, hereafter, “the complainant,” on behalf of the above-referenced student. In that correspondence, the complainant alleged that the Montgomery County Public Schools (MCPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) and related state requirements with respect to the student.

The MSDE investigated the following the allegations:

1. The MCPS did not ensure the confidentiality of the student’s educational record when disclosing personally identifiable information about the student in September 2017 and October 2017, in accordance with 34 CFR §99.30 - .39 and 34 CFR §300.610.

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2. The MCPS did not ensure that the student's parents were provided with a copy of the student's Individualized Education Program (IEP) within five (5) business days of the IEP team meeting held in September 2017, in accordance with Md. Code, Ann., Educ. §8-405.

BACKGROUND:

The student is fifteen (15) years old and is currently receiving Home and Hospital Teaching services. She is identified, under the IDEA, as a student with Autism and Other Health Impairment related to Crohn's Disease, and has an IEP that requires the provision of special education.

FINDINGS OF FACTS:

1. On September 25, 2017, the IEP team met to develop an IEP for the student to assist in her transitioning from Home and Hospital Teaching services to a school placement. The student's parent requested half-day placement in the comprehensive high school. The IEP team rejected that proposal, and determined that the student required a placement at a nonpublic school.
2. The MCPS acknowledges that there is no documentation that the student's parents received a copy of the IEP developed on September 25, 2017, within five days of the meeting. However, there is documentation that the student's parents have since been provided with this document.
3. Following the IEP team meeting, the MCPS staff sent documentation to five (5) nonpublic schools in an attempt to determine which schools that would accept the student.
4. After receiving correspondence from one of the nonpublic schools, the student's mother contacted the MCPS staff, objecting to the attempts to enroll the student in a nonpublic school and the disclosure of the student's information to the nonpublic schools. In response, the MCPS staff stated that they would instruct the schools to destroy documentation containing confidential information of the student.

DISCUSSION/CONCLUSIONS:

Allegation #1: The Student's Confidential Information

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). 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).

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However, disclosure of confidential information is permissible, without prior consent, to officials at another school where “the student seeks or intends to enroll” (34 CFR §99.31). This exception applies in instances where school staff are seeking an appropriate placement for the student under the IDEA (United States Department of Education, Family Policy Compliance Office, *Letter to Anonymous*, March 12, 2007).

In this case, the complainant alleges that the MCPS staff erred in sharing confidential information about the student with prospective nonpublic schools while seeking an appropriate placement for the student. The complainant further alleges that this disclosure required the consent of the student’s parents.

Based on Findings of Facts #1, #3, and #4, the MSDE finds that the disclosure of confidential information by the MCPS staff was for the purpose of locating an appropriate placement for the student under the IDEA. Therefore, the MSDE does not find that a violation occurred with respect to this allegation.

Allegation #2: Provision of Completed IEP

Based on Finding of Fact #2, there is no documentation that the student’s parents were provided with a copy of the student’s IEP within five business days of the September 2017 IEP team meeting, in accordance with COMAR 13A.05.01.07. Therefore, this office finds that a violation occurred with respect to this allegation.

However, notwithstanding this violation, based on that same Finding of Fact, the MSDE finds that no further student-specific corrective action is required.

CORRECTIVE ACTIONS/TIMELINES:

The MSDE concurs with the MCPS proposal to provide training to staff throughout the MCPS on the requirements of providing a copy of a completed IEP to parents following IEP team meetings.

Therefore, the MSDE requires that the MCPS provide documentation by June 15, 2018 that it has provided training for staff on these procedural requirements.

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 complainant and the MCPS by Dr. Nancy Birenbaum, Compliance Specialist, Family Support and Dispute Resolution Branch, MSDE. Dr. Birenbaum can be reached at (410) 767-7770.

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Please be advised that both the complainant and the MCPS 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 within the timelines reported in this Letter of Findings.

Questions regarding the findings and conclusions contained in this letter should be addressed to this office in writing. The student's parents 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:gl

c: Jack R. Smith
Tracee Hackett
XXXXXXXXXXXX
Dori Wilson
Anita Mandis
Gerald Loiacono
Nancy Birenbaum