

December 31, 2020

The Honorable Lawrence J. Hogan, Jr.
Governor of Maryland
100 State Circle
Annapolis, Maryland 21401

Re: Special Education State Complaint for

Dear Governor Hogan:

I am writing to file a complaint on behalf of my son (the Student), regarding his education in the state of Maryland (the State). I believe that the Maryland State Department of Education (the “State Educational Agency” or the “SEA”) and the State are in violation of certain requirements in the Individuals with Disabilities Education Act (IDEA or the “Act”), its implementing regulations at 34 C.F.R. §300 (the Regulations) and related Code of Maryland Regulations (COMAR). This complaint is filed under 34 C.F.R. §300.153 and COMAR 13A.05.01.15, against the SEA and the State. I will be referred to as the “Complainant” hereafter.

The details about the complaint are as follows:

Student Information:

Student's Name:

Date of Birth:

Address:

Local Educational Agency (LEA): Prince George's County Public Schools (PGCPS)

School the student is currently attending:

School(s) the student attended when violation(s) occurred:

(Placed by the PGCPS)

Student Background:

The Student is a fifteen (15) years old boy with Autism and Epilepsy, and is a child with disability under the IDEA. The Prince George's County Public Schools (the LEA) placed the Student at the [REDACTED] (the School), a non-public separate day school in the State, to receive Free Appropriate Public Education (FAPE).

Legal Standards:

1. The IDEA implementing regulations at 34 C.F.R. §300.610 requires that the Secretary takes appropriate action, in accordance with section 444 of GEPA, to ensure the protection of the confidentiality of any personally identifiable data, information, and records collected or maintained by the Secretary and by SEAs and LEAs pursuant to Part B of the Act, and consistent with §§300.611 through 300.627;
2. The IDEA implementing regulations at 34 C.F.R. §300.32 defines Personally Identifiable as the information that contains:
 - (a) The name of the child, the child's parent, or other family member;
 - (b) The address of the child;
 - (c) A personal identifier, such as the child's social security number or student number; or
 - (d) A list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty.
3. The IDEA implementing regulations at 34 C.F.R. §300.623(a) requires that each participating agency must protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages;
4. The IDEA implementing regulations at 34 C.F.R. §300.622 requires that parental consent must be obtained before personally identifiable information is disclosed to parties, other than officials of participating agencies in accordance with paragraph (b)(1) of this section, unless the information is contained in education records, and the disclosure is authorized without parental consent under 34 CFR part 99.
5. The IDEA implementing regulations at 34 C.F.R. §300.123 requires that the State must have policies and procedures in effect to ensure that public agencies in the State comply with 34 C.F.R. §§ 300.610 through 300.626 related to protecting the confidentiality of any personally identifiable information collected, used, or maintained under Part B of the Act;

6. The IDEA implementing regulations at 34 C.F.R. §300.152(a)(4) requires that each SEA must include in its complaint procedures a time limit of 60 days after a complaint is filed under 34 C.F.R. §300.153 to review all relevant information and make an independent determination as to whether the public agency is violating a requirement of Part B of the Act or of 34 C.F.R. §300;
7. The IDEA implementing regulations at 34 C.F.R. §300.600(a)(1) requires that the State must monitor the implementation of 34 C.F.R. §300; and
8. Pursuant to 34 C.F.R. §300.33 and section 612(a)(11) of the Act, the term public agency includes the SEA. The SEA must, therefore, resolve any complaint against the SEA pursuant to the SEA's adopted State complaint procedures. The SEA, however, may either appoint its own personnel to resolve the complaint, or may make arrangements with an outside party to resolve the complaint. If it chooses to use an outside party, however, the SEA remains responsible for complying with all procedural and remediation steps required in part 300. (Analysis of Comments and Changes to IDEA, *Federal Register*, Vol. 71, No. 156, p. 46602, August 14, 2006).

Background:

1. On October 10, 2020, the Complainant wrote a complaint under the IDEA and the Regulations against the State and the SEA addressed to you (the Complaint);
2. The Complaint identified the following individuals as Unauthorized Individuals:
 - (a) Laurie VanderPloeg;
 - (b) Gregg Corr; and
 - (c) Gbenimah Slopadoe;
3. The Complaint identified certain Personally Identifiable Information (PII) of the Student;
4. The Complaint contained the following allegations (collectively, the Allegations):
 - (a) The SEA did not protect the confidentiality of the PII at disclosure, in accordance with 34 CFR §300.623 (the Allegation #1);
 - (b) The SEA did not obtain parental consent before disclosing the PII to the Unauthorized Individuals, in accordance with 34 CFR §300.622 (the Allegation #2);
 - (c) The State did not have procedures in effect to ensure that the SEA complied with 34 C.F.R. § 300.622 and .623 with regards to protecting

- the confidentiality of the PII, in accordance with 34 C.F.R. §300.123 (the Allegation #3);
- (d) The State failed to monitor the implementation of 34 C.F.R. § 300.622 and .623 with regards to protecting the confidentiality of the PII, in accordance with 34 C.F.R. §300.600 (the Allegation #4); and
- (e) The State did not enforce the requirements under 34 C.F.R. § 300.622 and .623 with regards to protecting the confidentiality, in accordance with 34 C.F.R. §300.600 (the Allegation #5).
5. On October 23, 2020, Ms. Marcella E. Franczkowski, Assistant State Superintendent, Division of Special Education/Early Intervention Services within the SEA (hereafter the “Superintendent”); completed the investigation of the Complaint, but informed the Complainant in her letter dated October 23, 2020, (the Letter) that “we” will not initiate an IDEA State Complaint investigation;
 6. The Complainant was not informed when the SEA started the investigation and he was not provided opportunity to submit additional information during the investigation;
 7. The Superintendent asserted in the Letter that the Complainant “copied” his letter to the Unauthorized Individuals and for that reason she has the right to copy to the same individuals. The Superintendent did not identify any basis under IDEA or FERPA for her assertion;
 8. The Superintendent informed the Complainant in the Letter that she understood that under the FERPA, authorized representatives of federal and State agencies may have access, without parental consent, to education records in connection with enforcement of or compliance with federal legal requirements;
 9. There were no findings that the Unauthorized Individuals sought access to the Student's education records or were connected with any enforcement or compliance with federal legal requirements with regards to the matters in the Complaint;
 10. There were no findings that it was necessary to send the PII to the Unauthorized Individuals for the purpose of enforcement or compliance with any federal legal requirements;
 11. There were no findings that it was necessary to send the PII to Unauthorized Individuals in order to process any of the complaints filed by the Complainant with the SEA, including the Complaint;
 12. Under the IDEA and the Regulations, responsibility of processing State Complaints is with SEA and not with OSEP;

13. In the Letter, the Superintendent expressed her belief that the Complainant was aware that the OSEP has oversight responsibility for the MSDE's compliance with the IDEA and the Superintendent further expressed her belief that it was the reason the Complainant "copied" the OSEP;
14. There was no finding that OSEP implemented any of the above described responsibilities with regards to the matters in the Complaint;
15. In the Letter, the Superintendent did not make any mention about her responsibility or responsibility of the SEA with regards to the Complaint; and
16. In the Letter, the Superintendent did not present any facts for which exceptions under 34 CFR §99.35 were applicable for the matters described in the Complaint. The Complainant had already explained in the Complaint that disclosure of the PII to the Unauthorized Individuals was not authorized under 34 C.F.R. 99. The Superintendent acted in the Letter as if she had not seen it.

Violation #1:

The SEA did not review all relevant information or make an independent determination as to whether the SEA was violating requirements under 34 CFR §300.623 with regards to the Allegation #1, in accordance with 34 CFR §300.152.

Date(s) violation(s) occurred or duration of the violation: December 19, 2020

Violation #2:

The SEA did not review all relevant information or make an independent determination as to whether the SEA was violating requirements under 34 CFR §300.622 with regards to the Allegation #2, in accordance with 34 CFR §300.152.

Date(s) violation(s) occurred or duration of the violation: December 19, 2020

Violation #3:

The SEA did not review all relevant information or make an independent determination as to whether the SEA was violating requirements under 34 CFR §300.123 with regards to the Allegation #3, in accordance with 34 CFR §300.152.

Date(s) violation(s) occurred or duration of the violation: December 19, 2020

Violation #4:

The SEA did not review all relevant information or make an independent determination as to whether the SEA was violating requirements under 34 CFR §300.600 with regards to the Allegation #4, in accordance with 34 CFR §300.152.

Date(s) violation(s) occurred or duration of the violation: December 19, 2020

Violation #5:

The SEA did not review all relevant information or make an independent determination as to whether the SEA was violating requirements under 34 CFR §300.600 with regards to the Allegation #5, in accordance with 34 CFR §300.152.

Date(s) violation(s) occurred or duration of the violation: December 19, 2020

Violation #6:

The SEA did not give the Complainant with opportunity to submit additional information during the processing of the Complaint, in accordance with 34 CFR §300.152.

Date(s) violation(s) occurred or duration of the violation: December 19, 2020

Violation #7:

The State failed to monitor the implementation of State Complaint investigations of the Allegations by the SEA, in accordance with 34 C.F.R. §300.600.

Date(s) violation(s) occurred or duration of the violation: December 19, 2020

Violation #8:

The State did not enforce the requirements under 34 C.F.R. §300.151 and .152 with regards to investigation of the Allegations by the SEA, in accordance with 34 C.F.R. §300.600.

Date(s) violation(s) occurred or duration of the violation: December 19, 2020

Proposed Resolution:

1. Within ten (10) days of the date of this letter, you should provide a written confirmation to the Complainant that qualified staff have been appointed at the SEA to process State Complaints consistent with requirements of the IDEA, the Regulations and the FERPA;
2. Within ten (10) days of the date of this letter, the SEA or you should provide the Complainant with written confirmation from the Unauthorized Individuals that they have deleted any and all copies of the letters sent by the SEA without the written permission from the Complainant;
3. Within twenty (20) days of the date of this letter, you should ensure that external investigators not employed by the SEA or the State have completed the processing the Complainant and the Complainant have been provided written decision consistent with the requirements under the IDEA, the Regulations and the FERPA;
4. Within ten (10) days of the date of this letter, the SEA and you should provide a written explanation to the Complainant with the steps it has taken to ensure that it complies with 34 C.F.R. § 300.622 and .623 with regards to protecting the confidentiality of personally identifiable information of all children with disabilities in the State;
5. Within twenty (20) days of the date of this letter, you should provide a written explanation to the Complainant with 34 C.F.R. § 300.622 and .623 with regards to protecting the confidentiality of personally identifiable information of all children with disabilities in the State;
6. Within fifteen (15) days of the date of this letter, you should provide a written explanation to the Complainant with the steps the State has taken to ensure that the requirements under 34 C.F.R. § 300.622, .623, .151 and .152 are properly implemented in the State as required under the IDEA and the Regulations;
7. Within thirty (30) days of the date of this letter, the SEA should provide a written explanation to the Complainant, describing the steps it has taken to ensure that each of the violations and the issues identified in this letter do not reoccur for the Student or any other children with disabilities in the State; and
8. Within thirty (30) days of the date of this letter, you should provide a written explanation to the Complainant, describing the steps you have taken to ensure that each of the violations and the issues identified in this letter do not reoccur for the Student or any other children with disabilities in the State.

All of the above must be implemented.

Complainant Information:

Complainant's Name: HAMEED JAMARUSSADIQ

Relationship to Student: FATHER

Address: [REDACTED]

Telephone Number(s): [REDACTED]

This complaint is filed against the SEA and the State. Pursuant to 34 C.F.R. §300.33 and section 612(a)(11) of the Act, the term public agency includes the SEA. The SEA must, therefore, resolve any complaint against the SEA pursuant to the SEA's adopted State complaint procedures. The SEA, however, may either appoint its own personnel to resolve the complaint, or may make arrangements with an outside party to resolve the complaint. If it chooses to use an outside party, however, the SEA remains responsible for complying with all procedural and remediation steps required in part 300. (Analysis of Comments and Changes to IDEA, *Federal Register*, Vol. 71, No. 156, p. 46602, August 14, 2006).

Since the SEA has demonstrated severe deficiencies in its State Complaint procedures, because of the severity and depth of the deficiencies in the SEA's complaint investigation system and because of the unavailability of the qualified staff at the SEA, I strongly suggest that an outside party be used to investigate this complaint in order to have an independent, fair and proper investigation.

Failures of the SEA and the State described in this letter negatively impacts the education of children with disabilities in the State. I believe that it is essential that the SEA and the State fully comply with the requirements of the Regulations in order to provide Free Appropriate Public Education (FAPE) to the children with disabilities in the State.

By this letter to you and the copies, I would like to remind the SEA and the State that federal regulations prohibit public entities and recipients of Federal Financial Assistance (FFA) from taking actions, towards the Student or any of his immediate family members, to harass, intimidate, threaten, coerce or discriminate them, because I filed this complaint, any additional complaints regarding the same or different matter, asserted the Student's right to receive FAPE in the State, or asserted the Student's right to not being discriminated based on his disability, in the State. I request you to take proactive measures to ensure that violations described in this paragraph do not occur.

I request you to ensure that this complaint is processed in accordance with the IDEA and the Regulations, complying with all procedural requirements. I also request you to provide procedures for effective implementation of corrective actions to achieve compliance as required by the IDEA.

Thank you for your cooperation. Please contact me to confirm the receipt of this complaint, set up times for the investigators to talk to me and establish timelines for completing the investigation. If you or the investigators need further information or clarification, I can be reached at the contact numbers in this letter.

Sincerely,

A black rectangular redaction box covering the handwritten signature of Hameed Jamarussadiq.

Hameed Jamarussadiq

c: Laurie VanderPloeg
Gregg Corr
Christine Pilgrim
Gbenimah Slopadoe
Boyd K. Rutherford
Karen B. Salmon
Carol A. Williamson
Marcella E. Franczkowski
Trinell Bowman