



STATE OF CONNECTICUT

STATE DEPARTMENT OF EDUCATION



June 13, 2019

Mrs. Sarah Burke
Director of Pupil Personnel Services
Manchester Public Schools
45 North School Street
Manchester, CT 06042

Ms. Christina D. Ghio, Esq.
The Law Office of Christina D. Ghio, LLC
P.O. Box 186
Cheshire, CT 06410

Re:
Complaint No.: 19-0486

Dear Mrs. Burke and Ms. Ghio:

The Bureau of Special Education (BSE) is responding to the complaint filed with this office by Christina Ghio (the Attorney) on behalf of xxx, parents (Parents) of the above-referenced Student against the Manchester Public Schools (the District) on April 17, 2019. In the complaint, the Attorney alleged that the District failed to respond to an education records request within 10 days and failed to provide a complete copy of the Student's educational record. Specific findings of fact and conclusions are set forth in this report, and, where appropriate, required corrective actions for the District.

The complaint inquiry letter set forth the issue to be investigated as follows:

Issue: Regulations of Connecticut State Agencies (RCSA) § 10-76d-18 provides each board of education shall maintain records concerning children with disabilities or children referred for an evaluation to determine the child's eligibility for special education and related services. Parents have the right to inspect and review any education records relating to their child which are collected, maintained, or used by the board of education. The parent's right to inspect and review their child's records includes the right to one free copy of those records. If a written request for the free copy is made, the board of education must comply with the request not later than 10 days of the request. According to RCSA Section 10-76a-1(5), "days" means school days unless otherwise specified.

The following documents were reviewed for this report in addition to conversations with Ms. Burke,

- 1) 10-76d of the Connecticut General Statutes
- 2) 34 CFR Part 300 of the Federal Register
- 3) Regulations of Connecticut State Agencies
- 4) Complaint including letter from Attorney to District superintendent dated March 1, 2019, signed *Authorization to Release Information* dated February 29, 2019, excerpt from Frontline Education 2017 regarding auditing, and letters from Attorney to District's attorney dated March 22, 2019 and April 5, 2019

5) Manchester Public Schools' response to the Bureau's complaint inquiry letter including material also submitted with complaint

Findings of Fact:

The Student is xx-years-old and receives special education and related services under the Individual with Disabilities Education Act eligibility category of xx. The Parents made a written request for a complete copy of the Student's education record on March 1, 2019. The request for records included a list of 25 types of documents including staff notes, electronic IEP system material, test protocols, and all email communications including emails regarding the Parents. On March 12, 2019, District staff gathered Student's education records (cumulative file, special education file, physical management training records and health file) and sent the records on to the District's attorney to be forwarded to the Attorney. The Attorney received these records on March 13, 2019. The Attorney sent letters, dated March 22, 2019 and April 5, 2019, to the District's attorney, and in the letters, the Attorney stated the District did not send a complete set of the Student's education record. Among the records the Attorney stated had not been provided were copies of email communications. On March 29, 2019 the District sent the Attorney additional records with the exception of email messages and the notes from the behavior analyst. The only email communications preserved by the District were included in the Student's health file that has previously been copied and provided to the Parents. On April 11, 2019, copies the notes from the behavior analyst were sent to the Parents.

In response to the request for copies of the Student's education records, the District directed its Information Technology department to conduct a search for all emails on the District's computer network operating system that contained the Student's name, initials etc. This search yielded over 4,000 pages of emails. The District assigned 4 staff members to review this material and redact as appropriate. This endeavor has not been completed as of this date. The emails retrieved by the District's IT staff were not found in one location such as a child-specific electronic folder. None of the many emails identified by the IT department were being used or referred to by District staff. The email messages were not printed and placed in the Student's permanent physical file(s) with a single record of access.

Conclusions:

State regulations provide that a district must comply with a parents' written request for a copy of their child's educational records not later than 10 days of the request. (RCSA § 10-76d-18). The regulations provide that "days" refers to school days. (RCSA § 10-76a-1(5)). Here, the District provided the Parents with a copy of a portion of the Student's education records within the mandated timeline. The copy provided, however, was incomplete. Therefore, the District violated RCSA § 10-76d-18 when it did not provide the Parents with a full and complete copy of the Student's education records within the mandated timeline. The District did provide a complete copy of the Student's education record by April 11, 2019. It is concluded the emails retrieved by the District's IT department are not education records.

IDEA defines "education records" by reference to the definition of "education records" set out in the Family Educational Rights and Privacy Act (FERPA). The FERPA regulations define education records as those records that are directly related to a student and maintained by an educational agency or institution or by a party acting for the agency or institution. 34 CFR § 99.3(a). RCSA 10-76d-18 provides that parent has a right to copies of any education record relating to their child which are collected, maintained or used by the board of education. The ordinary meaning of the word "maintain", relevant to this complaint investigation, is to keep in

existence, preserve and retain. An email is a message sent by electronic means. Emails that are used as a communication tool and not maintained do not fit within the definition of an education record and are not subject to production under state or federal law. An email that is deliberately maintained by being printed and placed in a student's physical file would reasonably be viewed as being maintained and would be an education record. In contrast, emails that are merely stored in a public school's computer network system and not treated in a special way, organized or printed, would not be reasonably viewed as being maintained and would not be an education record.

School districts are not required to maintain email messages that relate to a student. The District did not maintain email messages regarding the Student, with the exception of the emails in the health file. There is nothing that would prohibit a district from providing a parent with copies of email messages. However, it is concluded the email messages are not education records and so, the delay in producing copies of the email messages is not a violation of special education requirements.

Required Corrective Action:

The District has provided the Parent with a complete copy of the Student's education record. Thus, no further corrective action is required.

This complaint report is final and not subject to appeal pursuant to the complaint resolution process. A party who has a right to request a due process hearing (that is, the parent or a local education agency) and who disagrees with this decision may initiate a due process hearing, provided that the subject of the due process hearing request involves an issue about which a due process hearing can be filed and the two-year statute of limitations for due process hearings has not expired. You can reach me at 860-713-6943 if you have any questions.

Sincerely,

Mary Jean Schierberl, Bureau of Special
Education

Cc: Mr. Matthew Geary, Superintendent of Schools
Mr. Bryan Klimkiewicz, Special Education Division Director