



MARYLAND OFFICE OF THE
INSPECTOR GENERAL FOR EDUCATION

Richard P. Henry
Inspector General

May 8, 2023

MEMORANDUM

To: Ms. Clarence C. Crawford
President
Maryland State Board of Education
200 W. Baltimore Street
Baltimore, Maryland 21201

RE: OIGE Case: 23-0006-I

Dear President Crawford,

The Maryland Office of the Inspector General for Education (OIGE) has concluded its investigation relating to the Maryland State Department of Education. Our investigative findings are included in the attached final report.

Please feel free to contact my office if you have any questions or concerns.

Respectfully,

Richard P. Henry
Inspector General

Enclosure

cc: Clarence C. Crawford, President – State Board of Education
Mohammed Choudhury, M.Ed., Maryland State Superintendent of Schools
Barry L. Gogel, Esq., Principal Counsel to The Canton Group
Elliott L. Schoen, Principal Counsel to MSDE
H. Brandis Marsh, Esq., Principal Counsel to OIGE
Members At Large, Maryland State Board of Education



MARYLAND OFFICE OF THE INSPECTOR GENERAL FOR EDUCATION



Investigative Report Summary

OIGE Case 23-0006-I

Issued: May 8, 2023



MARYLAND OFFICE OF THE
INSPECTOR GENERAL FOR EDUCATION
Richard P. Henry, Inspector General



May 8, 2023

To the Citizens of Maryland,

The General Assembly, at its First Session after the adoption of the Maryland Constitution, established throughout the State a thorough and efficient System of Free Public Schools; and shall provide by taxation, or otherwise, for their maintenance.¹ The Maryland Office of the Inspector General for Education (OIGE) is vital in safeguarding State funds provided to local school systems. Our primary mission is to prevent and detect fraud, waste and abuse, and educational mismanagement within School Boards, the Maryland State Department of Education (MSDE), the Interagency Commission of School Construction (IAC), the twenty-four (24) local education agencies (LEA), and non-public schools who receive State funding throughout the State of Maryland. Except under limited exceptions, the Inspector General may not disclose the identity of the source of a complaint or information provided.

Background

The OIGE initiated an investigation after receiving a complaint alleging that the State Superintendent of Schools and the Maryland State Department of Education (MSDE) removed publicly available data related to the Maryland Comprehensive Assessment Program (MCAP) from the MSDE website. The allegation also posited that MSDE had replaced and reposted revised MCAP data in an altered or de-identification format. The revised format prevents the public from analyzing student proficiency rates at the local school level and does not follow previously posted formats used by prior MSDE administrations. Lastly, the complaint alleged that MSDE inappropriately blamed an outside vendor for the premature disclosure of the MCAP data when it posted data files to the MSDE website.

Investigation

The OIGE reviewed the student education records privacy requirements and exceptions identified in the Family Educational Rights and Privacy Act (FERPA)². FERPA's confidentiality standard requires States to adopt methods of data reporting that avoid disclosing personally identifiable information³. Personally identifiable information includes names, personal identifiers, and other

¹ Constitution of Maryland, Article VIII, Education, Section 1

² The Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. § 1232g; 34 CFR Part 99) is a federal law that protects the privacy of student education records. The law applies to all schools that receive funds under an applicable program of the U.S. Department of Education.

³ 34 CFR 300.32(d), Personally Identifiable means information that contains a list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty.

information, such as test scores. In addition, the law limits the release of information alone, in combination which, or linkable to a specific student, would allow a reasonable person in the school(s) community to identify the student with reasonable certainty.⁴

States have the discretion to choose and implement methods to accomplish that confidentiality standard. In this case, the State Superintendent of Schools has specified using the minimum N size⁵ to release MCAP data.

The allegation further states that MSDE's use of the de-identification⁶ of data method prevents the public from analyzing student proficiency rates at the local school level. The OIGE's review indicated that MSDE did not go beyond what is required by FERPA.

Furthermore, the OIGE reviewed guidance provided by the Institute of Education Sciences (IES)⁷ - National Center for Education Statistics concerning once a data file is de-identified.

Once a data file is de-identified, the FERPA regulations indicate that a re-identification code may be attached to the data file so that the file can be released for use for education research (34 CFR § 99.31(b)(2)). While the de-identified data file with a re-identification code does not provide external researchers with personally identifiable information about students, a researcher is able to return to the source that issued the data to request additional data elements that can be added using the re-identification code.

The OIGE concludes that MSDE is following the guidance provided by the IES and FERPA and therefore complying with federal requirements governing the release of student information.

Finally, the OIGE conducted interviews and reviewed emails and phone log information pertaining to the allegation that MSDE provided its web vendor with identifiable student information in violation of FERPA. The OIGE confirms this does not violate the exceptions granted to an educational agency (MSDE) listed in 34 CFR §99.31. The embargoed data referenced in MSDE's April 20, 2023, statement and the method used in its disclosure⁸ are contract disputes and do not fall under the authority granted to the OIGE.

⁴ 34 CFR §99.31, Under what conditions is prior consent not required to discuss information?

⁵ Minimum n-size is the lowest number of students needed to create a student subgroup without inadvertently revealing personally identifiable information about any given student.

⁶ De-identified data describes records that have a re-identification code and have enough personally identifiable information removed or obscured so that the remaining information does not identify an individual, and there is no reasonable basis to believe that the information can be used to identify an individual. The re-identification code may allow the recipient to match information received from the same source.

⁷ National Center for Education Statistics, Institute of Education Sciences, SLDS Technical Brief, Guidance for Statewide Longitudinal Data Systems (SLDS), November 2010, Brief 1, NCES 2011-601

⁸ United States Department of Education, Privacy Technical Assistance Center, Frequently Asked Questions – Disclosure Avoidance, FAQs: Disclosure Avoidance of Personally Identifiable Information in Aggregate Reporting.

Findings

The OIGE found no evidence to substantiate these allegations. Therefore, based on the information reviewed and interviews conducted, the OIGE confirms that the State Superintendent of Schools is within the scope of his authority to release data using the revised, de-identifiable data method⁹.

The OIGE understands that information may be changed or updated after an investigation has been completed.

Respectfully,



Richard P. Henry
Inspector General

cc: Clarence C. Crawford, President – State Board of Education
Mohammed Choudhury, M.Ed., Maryland State Superintendent of Schools
Barry L. Gogel, Esq., Principal Counsel to The Canton Group
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⁹ United States Department of Education, Disclosure Avoidance and Limiting Access to PII, November 2012, <https://studentprivacy.ed.gov/training/disclosure-avoidance-and-limiting-access-pii-november-2012>