

December 2, 2004

Hon. Joel I. Klein
Chancellor
New York City Public Schools
Department of Education
52 Chambers Street, Room 314
New York, NY 10007

Re: Committee on Special Education Records
SCI Case #2004-2597

Dear Chancellor Klein:

An investigation conducted by this office has determined that confidential student records found in the trash in front of the office of the Committee on Special Education (“CSE”) for Region 2 in the Bronx were discarded in error. Officials at the CSE did not intend to have the material put out with the garbage, but could not explain the circumstances under which the documents were thrown out. The CSE comes under the supervision of Citywide Special Education Programs.

This report addresses the second of two incidents involving the disposal of confidential records that occurred between November 11, 2004 and November 15, 2004, at 3450 East Tremont Avenue in the Bronx. The first incident was investigated separately and was the subject of another report.

This investigation began after an article in the Tuesday, November 16, 2004, New York Daily News (“the News”) reported that, on Monday, November 15th, the paper had retrieved confidential and personal student records which had been placed out for pickup by the Sanitation Department.¹ This discovery came on the heels of an article in the News two days earlier which described the paper’s recovery of “11 boxes” of student records which had been put out with the garbage on Thursday. When the News turned

¹ The building is slated for regular pickup by Sanitation on Tuesday and Friday and a separate pickup of recycled material also is scheduled for Friday.

over the boxes – which actually totaled 12 in number – to this office on the 16th, the material recovered on the 15th was included.

An examination of the 467 pages of documents revealed that, unlike the thousands of records retrieved on Thursday, which pertained to students serviced by the Home Instruction School housed on the 1st floor of the building on Tremont Avenue, those recovered on Monday were from the CSE which is located on the 2nd floor and is a separate facility. Most of the documents were current and consisted of “600 series” records which relate to children waiting to be placed in special education. This material included personal information about the students. A number of other documents concerned a particular student who was returning to the Department of Education from a private school outside the City. The remaining 6 to 10 pages represented correspondence and other types of records. The discarded information also included one CSE envelope.

Custodial Handyman Albert Biele explained that, on Monday, November 15, 2004, he removed the garbage from the 2nd floor CSE office for pickup on Tuesday, November 16th, but did not notice anything unusual about the contents.

Region 2 CSE Chairperson Michelle Beatty was out of town during most of the week of November 15, 2004, and in her absence, Regional Special Education Evaluation Program & Placement Specialist William Ahearn was the senior staff member in the office. Ahearn reviewed the material turned over to this office by the News and acknowledged that the documents were CSE records. However, he did not know who had placed them in the trash and could not explain why or how it was done.

Upon her return, Beatty attempted to learn how the records were discarded, but was not able to locate the source of the problem. Beatty explained that the 600 series is printed out weekly and confirmed that the total number of pages found in the trash corresponded to the usual number printed. She added that these documents are generated by the Child Assistance Program (“CAP”) and then are handled by many people in the office, including CAP clerical staff, clinicians, and the placement specialists. While in use in the office, the 600 series is kept on a desk; when it is outdated, the material is shredded. According to Beatty, no one had admitted to disposing of the records and it was otherwise impossible to determine who was responsible for doing so.

Investigators inspected the CSE office and observed several recycle bins located near the copy machine. Paper placed in these receptacles was not shredded. Although the investigators also saw some containers marked “to be shredded,” the actual shredding area is in another part of the office.

During her examination of the incident, Beatty recognized the danger of having the recycle bins in close proximity to the copier. As a result of the mishap which occurred on November 16th, she has moved the recycled material away from the copy area and put a shredder bin in its place.

As we noted in our report concerning the Home Instruction School material which was placed out for pickup by Sanitation, the records of home instruction and special education students contain particularly sensitive information. Obviously, current records and those destined to be archived must be diligently safeguarded, even when being photocopied. Moreover, common sense suggests that, with respect to documents intended for disposal, shredding should be the norm rather than curbside pickup.

We are forwarding our findings for your information and any action that you deem appropriate.

We are sending a copy of this letter to the Office of Legal Services. We also are forwarding our findings to the State Education Department for whatever action it deems appropriate. Should you have any inquiries regarding the above, please contact First Deputy Commissioner Regina Loughran, the attorney assigned to the case. She can be reached at (212) 510-1426. Please notify First Deputy Commissioner Loughran within thirty days of receipt of this letter of what, if any, action has been taken or is contemplated concerning our findings. Thank you for your attention to this matter.

Sincerely,

RICHARD J. CONDON
Special Commissioner
of Investigation for the
New York City School District

By: _____

Regina A. Loughran
First Deputy Commissioner

RJC:RAL:ss

c: Michael Best, Esq.
Theresa Europe, Esq.
Rick Stewart, Auditor General

December 2, 2004

Hon. Rose Gill Hearn
Commissioner
New York City Department of Investigation
80 Maiden Lane, 18th floor
New York, NY 10038

Re: Committee on Special Education Records
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Dear Commissioner Gill Hearn:

An investigation conducted by this office has determined that confidential student records found in the trash in front of the office of the Committee on Special Education (“CSE”) for Region 2 in the Bronx were discarded in error. Officials at the CSE did not intend to have the material put out with the garbage, but could not explain the circumstances under which the documents were thrown out. The CSE comes under the supervision of Citywide Special Education Programs.

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We have forwarded our findings to the Chancellor for his information and any action that he deems appropriate.

Should you have any inquiries regarding the above, please contact me or First Deputy Commissioner Regina Loughran. She can be reached at (212) 510-1426.

Sincerely,

RICHARD J. CONDON
Special Commissioner
of Investigation for the
New York City School District

By: _____
Regina A. Loughran
First Deputy Commissioner

RJC:RAL:ss

December 2, 2004

Hon. Richard P. Mills
Commissioner
New York State Department of Education
Washington Avenue
Albany, NY 12234

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RICHARD J. CONDON
Special Commissioner
of Investigation for the
New York City School District

By: _____
Regina A. Loughran
First Deputy Commissioner

RJC:RAL:ss

c: Deborah A. Marriott, Esq.