

KANSAS STATE DEPARTMENT OF EDUCATION
SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT
FILED AGAINST
UNIFIED SCHOOL DISTRICT #__
ON AUGUST 16, 2021

DATE OF REPORT SEPTEMBER 17, 2021

This report is in response to a complaint filed with our office by _____, mother, on behalf of her 21-year old son, _____. It is noted that the parent has been appointed as her son's legal guardian by the court. In the remainder of this report, _____ will be referred to as "the student" and _____ will be referred to as "the mother" or the "the parent."

The complaint is against USD #__ (_____ Public Schools). In the remainder of the report, USD #__ may be referred to as the "school," the "district" or the "local education agency (LEA)."

The Kansas State Department of Education (KSDE) received the complaint on August 16, 2021. The KSDE allows for a 30-day timeline to investigate the child complaint, which ends on September 15, 2021. KSDE granted an extension of two days to complete the investigation at the Complaint Investigator's request.

Investigation of Complaint

Nancy Thomas, Complaint Investigator, interviewed the parent by telephone on August 17 and August 30, 2021 as part of the investigation.

USD #__ made the following school staff available for a telephone interview on September 1, 2021:

- [AG], Mediation / Due Process Supervisor
- [DL], General Counsel

In addition, Angie Estell, Director of Special Education at USD #261 (Haysville Public Schools) was interviewed on September 2, 2021.

In completing this investigation, the Complaint Investigator reviewed documentation provided by both the parent and the LEA. The following materials were used as the basis of the findings and conclusions of the investigation:

- Individualized Education Program (IEP) dated February 19, 2021
- Prior Written Notice for Identification, Initial Services, Placement, Change in Services, Change of Placement, and Request for Consent (PWN) dated August 20, 2021
- Current Enrollment Verification showing enrollment at Northwest High School effective August 12, 2021
- USD #__ Board of Education (BOE) Policy P5506: Non-Resident Enrollment and Admission
- Email dated May 6, 2021 from [PG], Clerk to the Board of Education, to all district and building administrators in USD #__
- Letter dated July 13, 2021 from [LR], Director of Transportation, to the parent
- Email dated July 14, 2021 from the parent to [AC], Superintendent, and [GA], Deputy Superintendent
- Email dated July 20, 2021 from the parent to [VE], Assistant Superintendent of Student Learning Services
- Email dated July 21, 2021 at 11:56 a.m. from Dr. [VE] to the parent
- Email dated July 21, 2021 at 12:11 p.m. from the parent to Dr. [EV]
- Email dated July 21, 2021 at 3:05 p.m. from [JJ], Assistant to the Mayor, to the parent
- Email dated July 22, 2021 at 8:59 a.m. from Dr. [EV] to the parent
- Email dated July 22, 2021 at 9:12 a.m. from the parent to Dr. [EV]
- Email dated July 22, 2021 at 9:37 a.m. from the parent to [SL], At-Large Board of Education Member
- Email dated July 22, 2021 at 12:51 p.m. from Ms. [SL] to the parent
- Email dated July 23, 2021 at 10:48 a.m. from the parent to Ms. [SL] and Dr. [EV]
- Email dated July 23, 2021 at 4:40 p.m. from Dr. [EV] to the parent
- Email dated July 26, 2021 at 7:53 a.m. from the parent to Dr. [EV]
- Email dated July 26, 2021 at 12:12 p.m. from Ms. [LR] to building principals in USD #__

- Email dated July 29, 2021 at 11:03 a.m. from the parent to Alexa Oliphant, Targeted Case Manager at Individual Advocacy
- Email dated July 29, 2021 at 12: 25 p.m. from Ms. Oliphant to the parent
- Email dated July 29, 2021 at 12:29 p.m. from the parent to Dr. [EV]
- Email dated July 30, 2021 at 1:33 p.m. from the parent to [LP], Registrar at Northwest High School
- Email dated July 31, 2021 at 3:38 p.m. from Ms. [LR] to [SS], Assistant Principal at Northwest High School
- Email dated August 2, 2021 from the parent to Dee Nighswonger, Director of the Developmental Disability Organization for Sedgwick County
- Email dated August 9, 2021 at 10:31 a.m. from the parent to Tricia McConnell, Disability Rights Center of Kansas
- Email dated August 20, 2021 from Ms. [AG] to the parent
- USD #__ School Calendar for the 2020-21 school year
- USD #__ School Calendar for the 2021-22 school year
- Family Education Rights and Privacy Act (FERPA) annual notice to parents
- USD #__ Response to the Allegations dated August 25, 2021
- Email dated September 2, 2021 from Ms. [AG] to the Complaint Investigator
- Email dated September 16, 2021 at 9:17 a.m. from Ms. [AG] to the Complaint Investigator
- The KSDE Enrollment Handbook for the 2021-22 School Year

Background Information

This investigation involves a 21-year-old male student who is enrolled at _____ Northwest High School in USD #__ for the 2021-22 school year where he receives transition services as required by his IEP. The student has multiple disabilities including Autism and Fragile X Syndrome. The student resided in the USD #__ district boundaries until January 2018 when the family moved to a home within the USD #261 district boundaries. The student has received special education and related services throughout his school career exclusively at USD #__ as a resident student and then as a non-resident student through an enrollment application for special assignment. The student met graduation requirements in May 2018 as a senior in high school and has continued to attend _____ Northwest High School to receive specialized instruction for transition as a student aged 18 – 21 for the past three school years. The most recent

reevaluation of the student was conducted in January 2021 and the multidisciplinary team determined that the student continued to be eligible for special education and related services through the age of 21 under the exceptionality categories of autism and speech/language impairments. The 2021-22 school year is the last year the student will be eligible to receive special education and related services as he has reached the maximum age for services when he turned age 21 in August 2021.

Issues

The Individuals with Disabilities Education Act (IDEA) and Kansas Special Education for Exceptional Children Act give KSDE jurisdiction to investigate allegations of noncompliance with special education laws that occurred not more than one year from the date the complaint is received by KSDE (34 C.F.R. 300.153(c); K.A.R. 91-40-51(b)(1)).

Based upon the written complaint and an interview, the mother raised two issues that were investigated.

ISSUE ONE: The USD #__, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to implement the student's Individual Education Program (IEP) as written, specifically by not providing transportation as a related service during the 2021-22 school year.

Positions of the Parties

The parent alleges that USD #__ has failed to provide the student with transportation as a related service since the beginning of the 2021-22 school year as required by the February 19, 2021 IEP. The parent indicated that the student has attended Northwest High School in USD #__ since he was a freshman in high school during the 2014-15 school year. The parent stated that USD #__ provided the student with transportation to Northwest High School throughout his entire high school career until the current school year. The parent reported this change occurred because of a new district transportation policy which should not apply to her son because his IEP requires transportation as a related service.

The parent reported she first learned of the district's new transportation policy in a letter dated July 13, 2021 from the Director of Transportation. The letter stated that the district would no longer be providing transportation from the student's home to Northwest High School during the 2021-22 school year. The letter also informed her that she would be responsible for transportation if she wanted the student to continue to attend Northwest High School.

The parent stated that she immediately contacted multiple school officials and requested an exception be made to the policy since the student's IEP requires transportation as a related service. However, the district continues to refuse to provide transportation. The parent reported that she has been paying CarePool, a ride sharing program for persons with disabilities, to provide transportation for the student to attend Northwest High School since August 12, 2021, the first day of the 2021-22 school year.

The parent expressed great frustration that the Board of Education (BOE) Policy P5506 was adopted by the School Board at the beginning of May 2021 and that it took more than 10 weeks for her to be notified of the new policy in a letter dated July 13, 2021. This notification was less than a month prior to the first day of the 2021-22 school year. The parent noted that the student's teachers at Northwest High School had no idea that the student's transportation was being terminated until she contacted them for assistance following receipt of the letter.

The parent acknowledged that her current residence is not within the USD #__ district boundaries but believes USD #__ should be providing transportation for the student to and from Northwest High School despite the new BOE policy because the student's IEP requires transportation as a related service. She also believes an exception to the policy should be made because Northwest High School in USD #__ is the only high school the student has ever attended. The mother believes the student would regress if he changed schools during his final school year because of the emotional stress from not knowing anyone at the new school. In addition, the parent reported that their residence is only a couple of blocks outside of the school district boundaries and USD #__ provided transportation from this same residence during the 2020-21 school year.

USD #__ reported that the change in transportation status for the student is the result of an update to the BOE policy related to non-resident enrollment and admission which went into effect for the 2021-22 school year. This policy requires the lawful custodian of non-resident students who attend USD #__ through the Open Enrollment program to provide transportation to and from the school of attendance.

USD #__ reported that the student lives within the boundaries of USD #261 and has attended Northwest High School through the BOE's Non-Resident Enrollment and Admission policy. USD #__ also acknowledged that the student's IEP dated February 19, 2021 includes transportation as a related service and that the district provided transportation to and from the student's current residence in the previous school years; however, this was allowed under the previous BOE policy related to transportation for non-resident students. The district noted that parent was provided with PWN of the change in transportation services on August 20, 2021.

USD #__ indicated transportation for the student was stopped for the 2021-22 school year in compliance with their current BOE policy related to non-resident enrollment and admission.

Findings of the Investigation

The following findings are based upon a review of documentation and interviews with the parent and LEA staff in USD #__.

The student's current IEP was developed at an IEP team meeting held on February 19, 2021. This IEP requires transportation as a related service be provided to the student and USD #__ did provide transportation between the student's current residence in USD #261 district boundaries and Northwest High School during the 2020-21 school year. USD #__ has not provided this same transportation service for the student during the 2021-22 school year.

The parent completed the online enrollment forms to attend Northwest High School in USD #__ on June 21, 2021 and the student's enrollment was confirmed by USD #__ on July 6, 2021. The parent was notified about the change in transportation on July 13,

2021 and subsequently contacted multiple school officials requesting an exemption to new transportation policy for non-resident students. The parent ultimately chose to continue the student's enrollment in Northwest High School in USD #__ through the BOE's Non-Resident Enrollment and Admission policy for the 2021-22 school year. The student has been in attendance since August 12, 2021, the first day of the 2021-22 school year.

The USD #__ amended BOE Policy P5506 Non-Resident Enrollment and Admission at its May 3, 2021 meeting to include the following statement, "Effective August 1, 2021, the non-resident student's lawful custodian is responsible for transportation of the student to and from school." The USD #__ BOE Policy P5506 indicates that special education students and regular education students will be treated equally under this policy.

On May 6, 2021, the Director of Transportation sent an email to all USD #__ district and building level administrators alerting them to this new BOE policy which would take effect on August 1, 2021 for the 2021-22 school year. The policy was also published on the district's website on or about that same date.

On July 13, 2021, the Director of Transportation sent a letter to the parent detailing the discontinuation of transportation to and from the student's out-of-district residence effective on August 1, 2021 in accordance with BOE Policy P5506.

On July 14, 2021, the parent sent an email to Dr. [AC], Superintendent, and Mr. [GA], Deputy Superintendent, requesting an exception be made to the new BOE policy; however, she received no response.

On July 20, 2021, the parent emailed Dr. Vince[EV], Assistant Superintendent of Student Learning Services, and again requested an exception be made to the new BOE policy and that the student continue to be transported between his residence and Northwest High School. Dr. [EV] responded and explained that no exceptions would be made due to BOE Policy P5506. The parent and Dr. [EV] exchanged additional emails on July 21 and July 22, 2021. In each of these contacts, the parent requested that the student continue to receive transportation to and from their out-of-district

residence and Northwest High School during the 2021-22 school year. However, each time her request was denied by Dr. [EV] citing BOE Policy P5506.

On July 22, 2021, the parent emailed [SL], At-Large BOE Member, and again requested that an exception be made to the new BOE policy for her son so that USD #__ could continue to provide transportation to Northwest High School during the 2021-22 school year. Ms. [SL] responded that same day and stated that no exceptions would be made and shared that the new non-resident transportation policy was even affecting several of her family members.

Following receipt of the July 13, 2021 letter, the parent reached out to the student's targeted case manager at Individual Advocacy, the director of the Developmental Disability Organization for Sedgwick County, the Wichita City Office, and the Disability Rights Center of Kansas for assistance. She explored several options for obtaining transportation for the student between their residence and Northwest High School including Wichita Transit's Paratransit Division and CarePool. The parent chose to pay CarePool to provide the student's transportation beginning on August 12, 2021, the first day of the 2021-22 school year.

School staff returned to work for the 2021-22 school year on August 4, 2021 to prepare for the first day of school at Northwest High School on August 12, 2021.

On August 16, 2021, USD #__ was notified of the filing of the allegations included in this child complaint and conducted an internal investigation. It was determined that the parent had not been provided with appropriate prior written notice of the change in transportation as a related service.

USD # __ provided the parent with PWN on August 20, 2021. The description of the action proposed or refused states:

The student will not receive the special education related service of transportation per BOE Policy 5506 NON-RESIDENT ENROLLMENT AND ADMISSION. However, the student may continue to attend USD __ Northwest High School where he will continue to receive all other services

as written in his IEP dated February 19, 2021 should you choose to provide transportation to and from Northwest High School.

The explanation of why the action is proposed or refused and the options considered and why rejected sections of the PWN both cite the fact that the student is a non-resident of USD #__ and refer to BOE Policy P5506 Non-Resident Enrollment and Admission which it states that the lawful custodian of a non-resident student is responsible for the transportation of the student to and from school.

The other factors relevant to the proposal or refusal section of the PWN states:

At this time, the student's IEP continues to recognize him as eligible for the special education related service of transportation should you choose for him to attend school in his district of residence - it has not been terminated from his IEP. The student is currently attending Northwest High School and is receiving his IEP as written (except for special education transportation).

A Prior Written Notice informing you that special education transportation would no longer be provided outside of the _____ Public Schools attendance boundary area should have been provided to you prior to August 1, 2021. This Prior Written Notice serves as a correction to that oversight. Please note that written parental consent is not required.

It is noted that the August 20, 2021 PWN does not include the date the IEP team met to determine, with the parent's input, the proposed changes in special education and related services described in the PWN that need to be provided to the student.

USD #__ noted that the policy change has impacted both students without disabilities and students with disabilities who receive special education services. Ms. [AG] stated:

In prior years, transportation was offered to non-resident students on a space-available basis for general education and special education students who did not otherwise have transportation designated as a related service on their IEPs. Subsequent to the updated P5506, space-available transportation is no longer offered. All non-resident students seeking to

enroll in the _____ Public Schools are informed of this prior to and upon enrollment under non-resident status.

Ms. [AG] noted that, in addition to the complainant's son, the district ceased out-of-district transportation for four other students with IEPs. All received the same letter from the Director of Transportation describing the change in transportation as a result of the new BOE policy. Of those four, only one had the special education related service of transportation on the IEP. A Prior Written Notice was also not provided to the parent of that student subsequent to the updated BOE policy P5506. Ms. [AG] reported that parent was provided with PWN about the change in transportation due to the new BOE policy on September 2, 2021. The remaining three students received general education transportation on a space-available basis prior to the new board policy and transportation is not identified on their current IEPs (all dated prior to May 2021) as a special education related service.

Applicable Regulations and Conclusions

Federal regulations implementing the IDEA at 34 C.F.R. 300.323(c)(2) require school districts to ensure that as soon as possible following the development of the IEP, special education and related services are made available to the child in accordance with the child's IEP. In addition, state regulations implementing the Kansas Special Education for Exceptional Children Act at K.A.R. 91-40-19(a) require each school district, teacher, and related services provider to provide special education and related services to the child in accordance with the child's IEP.

Kansas statute K.S.A. 72-3410 states that each board shall provide a free appropriate public education (FAPE) for exceptional children who enroll in the district.

The Kansas Constitution allows each school district's locally elected board to create the policies on governing non-resident enrollment and admission so long as those policies comply with state and federal requirements. State and federal requirements mandate that any admission policies created by school boards must be neutral in regards to **ALL** nonresident children who elect to apply for admission in a nonresident district.

In this case, the student is a resident of USD #261 (Haysville School District) and the parent has chosen to have the student attend Northwest High School in USD #__ for the 2021-22 school year.

This attendance choice is subject to the provisions of the USD #__ BOE Policy P5506 Non-Resident Enrollment and Admission which states, "Special education students and regular education students will be treated equally under this policy." On May 3, 2021, the BOE Policy P5506 was amended to state, "Effective August 1, 2021, the non-resident student's lawful custodian is responsible for transportation of the student to and from school." The USD #__ Board of Education has the authority to make such an amendment under Kansas statute K.S.A. 72-6494.

The student's current IEP dated February 19, 2021, requires transportation as a related service. Interviews and documentation show that USD #__ provided transportation as a related service during the 2020-21 school year as allowed under the BOE Policy P5506 in effect at that time. However, transportation as a related service is not being provided to the student by USD #__ during the 2021-22 school year based upon the May 3, 2021 amendment to BOE Policy P5506. The parent alleges this is a violation of 34 C.F.R. 300.323(c)(2) and K.A.R. 91-40-19(a).

The 8th Circuit Court of Appeals ruled on this issue in July 2020. At this time, it is the only U.S. Circuit Court of Appeals that has ruled on this issue, and as such, is the most persuasive authority.

In *Osseo Area Schools, Independent School v. MNB*, 970 F.3d 917 (8th Cir. 2020), the school district was not required to provide the transportation as a related service a student who was enrolled through the district's non-resident open enrollment and admissions program even though the student's current IEP included it as a required service. The court noted that the Spending Clause of the U.S. Constitution requires Congress to specify all conditions imposed on grants of federal funds and that the IDEA does not require home-to-school transportation to a non-resident student as a condition of receiving federal funds. U.S. Circuit Judge Steven M. Colloton wrote:

We see nothing in the IDEA that provides clear notice to a State that it must cover transportation expenses when a student's travel is the result of a parent's choice under an open enrollment program.

It is important to note that this ruling was limited the specific issue of transportation as a related service and does not extend to any other service that may be in the IEP of a non-resident student with a disability.

In this case, USD #__ allows non-resident students to apply for enrollment in the district and sets neutral conditions for that enrollment. Any enrollment in USD #__ by a non-resident student is subject to those conditions. One of the conditions set by USD #__ and authorized by Kansas statute is to deny transportation to nonresident students effective August 1, 2021. This means that a non-resident student who chooses to enroll in USD #__ does not have a right to receive transportation, even if transportation is in the IEP.

Interviews and documentation show the parent originally enrolled the student in USD #__ on June 21, 2021 and the application for special attendance enrollment was accepted on July 6, 2021. USD #__ made the parent aware of the new BOE policy on July 13, 2021. The parent subsequently obtained transportation through CarePool and the student has been attending Northwest High School in USD #__ since the first day of the 2021-22 school year.

Based on the foregoing, a violation of special education statutes and regulations is not substantiated for failing to provide transportation as a related service during the 2021-22 school year because the parent made the choice to enroll the student as a non-resident student in USD #__ for the 2021-22 school year pursuant to the BOE policy P5506 and with full knowledge of the conditions set forth for such enrollment.

It is noted that USD #__ was not required to provide the parent with PWN of the change in transportation status pursuant to BOE policy P5506. The IEP was not changed by the team nor was it changed by an amendment. Transportation continues to be in the IEP and continues to be an enforceable IEP provision should the student enroll in the school district where he is currently a resident or should he become a resident student in USD #__ again.

Transportation became unavailable because the parent chose to select the non-resident option for the student to attend school in USD #__. That option was only available to the parent on the condition that the parent provide transportation. That

condition is a neutral provision to which any non-resident parent, both non-resident parents of students with a disability and non-resident parents of students without a disability, must agree in order to take advantage of the non-resident enrollment opportunity offered by USD #__.

The district does not have an obligation to provide a PWN when a parent elects to choose an educational option, subject to stated conditions, precisely because the parent has notice of the conditions and has agreed to those conditions when making the election.

ISSUE TWO: The USD #__, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), disclosed the student's personally identifiable information to an unauthorized person without the parent's consent during the past twelve months.

Positions of the Parties

The parent reported that Dr. [EV], a school official in USD #__, contacted the Director of Special Education in USD #261 and shared the student's personally identifiable information, specifically the student's IEP status, without her consent. The parent alleges this happened sometime between her first contact with Dr. [EV] about the problem with the transportation policy on July 20, 2021 and when she spoke to the Special Education Director in USD #261 on July 28, 2021. The parent stated that she was surprised to learn that the USD #261 staff already knew about her son's IEP even though he had never attended school in that district and she had never contacted anyone in USD #261 regarding enrollment for the student. The parent believes Dr. [EV] had no reason to contact USD #261 and share information about her son's IEP without her written consent.

USD #__ acknowledged that Dr. [EV] contacted the Director of Special Education at USD #261, Angie Estell, in regards to the student during July 2021. USD #__ believes that Dr. Evan's contact falls within the exception to the IDEA and the Family Educational Rights and Privacy Act (FERPA) which allows a district to release personally identifiable information about a student without written parent consent to another school system in which the student seeks or intends to enroll.

Findings of the Investigation

The findings of Issue One are incorporated herein by reference.

The following findings are based upon a review of documentation and interviews with the parent and LEA staff in both USD #__ and USD #261.

USD #__ reported that Dr. [EV] was unable to recall or provide documentation of the exact date he contacted Ms. Estell in USD #261. He believes the contact was made sometime between July 14 and July 20, 2021.

USD #__ reported that Dr. [EV] contacted the student's district of residence seeking to determine if that district had knowledge of the parent and to inform USD #261 that USD #__ had informed the parent of the district's acceptance of the parent's enrollment application for special assignment should she seek to enroll the student in USD #261 for the 2021-22 school year.

Ms. Estell was unable to recall or provide documentation of the exact date that Dr. [EV] contacted her in regards to the student. She believes the contact was made sometime after July 6, 2021 when she returned from vacation and prior to July 28, 2021 when she spoke to the parent by telephone. Her recollection of the conversations was that Dr. [EV] was calling to give her "a heads up" about a student with an IEP who resided within the boundaries of USD #261 and who might be enrolling for the 2021-22 school year.

The parent and Ms. Estell both reported that their telephone conversation occurred on July 28, 2021. During this conversation, the parent shared information about the student's IEP and the transition services he received at Northwest High School in USD #__. Ms. Estell provided information about the range of transition services provided for students ages 18-21 at the high schools in USD #261. Both parties agree that the parent would "reach out" if she wanted to enroll the student in USD #261.

The parent has no direct knowledge of when Dr. [EV] contacted Ms. Estell in USD #261 but is certain that it occurred prior to the July 28, 2021 phone call. The parent reported that it was during this phone call with Ms. Estell that she learned that Dr. [EV] had previously contacted Ms. Estell about the student's IEP and the fact that the student was residing within the USD #261 boundaries. She shared her frustration

about this contact in an email dated July 30, 2021 with the Registrar at Northwest High School by stating:

And [EV] even went as far as to tell me to put him in Haysville schools and he even contacted them and told them about the student.

The parent states that she never sought, requested, nor had any intention of enrolling the student in USD #261. She believes she made this clear in her emails to Dr. [EV] as noted below:

- July 20, 2021 at 1:14 p.m.: "I WILL NOT SEND MY SON TO HAYSVILLE SCHOOLS!"
- July 21, 2021 at 12:11 a.m.: "I do not want to change the school district, and I think an exception should be made. Otherwise I will be forced to pull him out.

Applicable Regulations and Conclusions

Federal regulations implementing the IDEA at 34 C.F.R. 300.622(a)(1) require school districts to obtain parent consent prior to releasing personally identifiable information about a student to an unauthorized person unless the information is contained in education records and the disclosure is authorized without parental consent under a FERPA exception.

Federal regulations implementing FERPA at 34 C.F.R. 99.3 state that the term "personally identifiable information" (PII) includes, but is not limited to the student's name; the name of the student's parent or other family members; the address of the student or student's family; a personal identifier such as the student's social security number, student number, or biometric record; other indirect identifiers, such as the student's date of birth, place of birth, and mother's maiden name; other information that, alone or in combination, is linked or linkable to a specific student that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty; or information requested by a person who the school district reasonably believes knows the identity of the student to whom the education record relates. A student's disability status and any information about a student's IEP services would fall under the definition of PII.

“Directory information” is defined at 34 C.F.R. 99.3 as information contained in an education record of a student that would not generally be considered harmful or an invasion of privacy if disclosed. This includes a student’s name and address. Under 34 C.F.R. 99.31(a)(11) and 99.37(a), a school district may disclose PII from an education record of a student without parent consent if the disclosure is information the school district has designated as “directory information” and the school district has given public notice to parents of (1) the types of PII that the school district has designated as directory information, (2) a parent’s right to refuse to let the school district designate information about the student as directory information, and (3) the period of time that a parent has to notify the school district in writing that they do not want information about the student designated as directory information.

In this case, interviews and documentation show that Dr. [EV] shared information about the student with a school official in USD #261 without parent consent. It is clear that he released directory information about the student’s address and the fact that the student is currently residing within the boundaries of USD #261. It is not clear that he shared specific information about the student’s disability or the student’s IEP; however, the fact that Dr. [EV] contacted the Director of Special Education in USD #261, rather than a general education district administrator, indicates that disability status was likely part of the conversation.

Federal regulations implementing FERPA at 34 C.F.R. 99.31(a)(2) allows school districts to disclose personally identifiable information without parent consent to officials of another school where the student seeks or intends to enroll so long as the disclosure is for the purposes related to the student’s enrollment or transfer.

In this case, the parent made it clear in the July 20, 2021 email to Dr. [EV] that she had no intention to enroll the student in USD #261. However, it is unclear when Dr. [EV] shared the personally identifiable information with the school official in USD #261. Based upon the parent’s initial contact with USD #__ school officials in the email dated July 14, 2021, it is possible that Dr. [EV] had reason to suspect the parent would seek to enroll the student in USD #261 based upon the change in transportation for non-resident students for the 2021-22 school year. Dr. [EV] reported he contacted Ms.

Estell sometime between July 14 and July 20, 2021 and Ms. Estell indicated the contact could have been made any time between July 6 and July 28, 2021.

Based on the foregoing, a violation of special education statutes and regulations is not substantiated for the disclosure of the student's personally identifiable information to an unauthorized person without the parent's consent during the past 12 months.

Right to Appeal

Either party may appeal the findings or conclusions in this report by filing a written notice of appeal with the State Commissioner of Education, ATTN: Special Education and Title Services, Landon State Office Building, 900 SW Jackson Street, Suite 620, Topeka, KS 66612-1212. The notice of appeal may also be filed by email to formalcomplaints@ksde.org. The notice of appeal must be delivered within 10 calendar days from the date of this report.

For further description of the appeals process, see Kansas Administrative Regulations 91-40-51(f), which can be found at the end of this report.

Nancy Thomas

Nancy Thomas, Complaint Investigator

K.A.R. 91-40-5(f) Appeals.

(1) Any agency or complainant may appeal any of the findings or conclusions of a compliance report prepared by the special education section of the department by filing a written notice of appeal with the state commissioner of education. Each notice shall be filed within 10 days from the date of the report. Each notice shall provide a detailed statement of the basis for alleging that the report is incorrect.

Upon receiving an appeal, an appeal committee of at least three department of education members shall be appointed by the commissioner to review the report and to consider the information provided by the local education agency, the complainant, or others. The appeal process, including any hearing conducted by the appeal committee, shall be completed within 15 days from the date of receipt of the notice of appeal, and a decision shall be rendered within five days after the appeal process is completed.

unless the appeal committee determines that exceptional circumstances exist with respect to the particular complaint. In this event, the decision shall be rendered as soon as possible by the appeal committee.

(2) If an appeal committee affirms a compliance report that requires corrective action by an agency, that agency shall initiate the required corrective action immediately. If, after five days, no required corrective action has been initiated, the agency shall be notified of the action that will be taken to assure compliance as determined by the department. This action may include any of the following:

- (A) the issuance of an accreditation deficiency advisement;
- (B) the withholding of state or federal funds otherwise available to the agency;
- (C) the award of monetary reimbursement to the complainant; or
- (D) any combination of the actions specified in paragraph (f)(2)