

**KANSAS STATE DEPARTMENT OF EDUCATION
SPECIAL EDUCATION AND TITLE SERVICES**

**REPORT OF COMPLAINT
FILED AGAINST
BLUE VALLEY UNIFIED SCHOOL DISTRICT # 229
ON NOVEMBER 30, 2022**

DATE OF REPORT: December 21, 2022

This report is in response to a complaint filed with our office by Matthew Rogers, attorney for the parents and on behalf of the parents' son, The student. The student will be referred to as "this student" in the remainder of this report. The other student involved in the incident described below, will be referred to as the "other student." The parents will be referred to as "the parents."

Investigation of Complaint

The investigator reviewed the complaint submitted on behalf of the student and reviewed the written response of the district. The district's response was sent by e-mail on December 9, 2022, by Stephanie Lovett-Bowman, attorney for the school district.

Background Information

The relevant facts of this case are not in dispute, in any material way. An incident occurred between this student and another student on August 23, 2022. The incident between this student and the other student was recorded on a surveillance video. The surveillance video did not include any audio recording.

This student received two 30-minute after-school detentions from Dr. Lisa Stolper, the principal of Lakewood Middle School (LKMS), as the result of the incident. One of the detentions, which both students received, was based on the behavior of both students to each other. The other detention imposed on this student was based on this student's behavior toward Dr. Stolper during the incident.

Mr. Rogers wrote a letter, dated September 21, 2022, to the Registrar at the Lakewood Middle School. The September 21, 2022, letter included a release

form signed by this student's mother, authorizing the district to disclose to Mr. Roger's firm "any and all education records pertaining to [this student]." The September 21, 2022, letter made a request for a "complete copy" of specified records, or "a mutually agreeable date and time to view" the specified records. The records specified in the September 21, 2022, letter were as follows:

1. Any video or audio recordings depicting the purported incident occurring on August 23, 2022, between [this student] and another student that District staff reported to the [parents]. This request includes but is not limited to video and audio recordings taken before, during, and after the incident that relate in any way to the alleged incident, including any staff interactions with either student.
2. Any written statements (e.g., emails or text messages describing the incident, witness statements, etc.) regarding the alleged incident described in paragraph one.

On September 29, 2022, Melissa Hillman, Chief Legal Officer for USD 229, responded to the September 21 letter from Mr. Rogers to the Registrar. In that response letter, Ms. Hillman stated that, with regard to this student's academic records, the parents could work directly with the Lakewood Middle School's registrar to obtain the specific records they were seeking. In the September 29, 2022, letter, Ms. Hillman also stated that "there are no written witness statements." In the September 29, 2022, letter Ms. Hillman denied the request to review the video, saying "Because it is not possible to view the video without disclosing information related to both students, and parental consent to share information was denied, the school appropriately informed [the parents] about the content of the video as it relates to [the student]."

In a letter, dated October 25, 2022, Mr. Rogers responded to Ms. Hillman's September 29, 2022, letter, making legal arguments, and stating that the parents "do not object to viewing a redacted version, if the redaction does not impair the video's meaning."

Issues

In the complaint, the parent raises one issue:

Issue One: The school district refused parental access to student records, including: (1) video recording(s) depicting a reported incident between [this student] and another student that the District relied upon in disciplining [this student] and (2) statements, emails, text messages, etc. regarding the alleged incident.

Analysis

The first consideration is whether the Kansas State Department of Education has jurisdiction to investigate this complaint. For the following reasons, this investigator concludes that it does not.

The requirements to obtain parent consent to disclose personally identifiable information and to provide parent access to education records is similar in both the Individuals with Disabilities Act (IDEA) and the Family Educational Rights and Privacy Act (FERPA). They are not, however, identical.

The pertinent state regulation is K.A.R. 91-40-50(b). That regulation says:

(b) The provisions in 34 C.F.R. §§ 300.612 through 300.624, as in effect on August 14, 2006, and published in 71 fed. reg. 46802-46804 (2006), which concern parental access to education records and confidentiality of those records, are hereby adopted by reference.

Accordingly, Kansas has adopted the federal regulations, at 34 C.F.R. 300.613 with regard to a parent's right to access the special education records for their child. 34 C.F.R. 300.613(a) states:

(a) Each participating agency must permit parents to inspect and review any **education records** relating to their children **that are collected, maintained, or used by the agency under this part**. The agency must comply with a request without unnecessary delay and before any meeting regarding an IEP, or any hearing pursuant to Sec. 300.507 or Sec. Sec. 300.530 through 300.532, or resolution session pursuant to Sec. 300.510, and in no case more than 45 days after the request has been made (emphasis added).

Assuming that the surveillance video, along with other “statements, emails, text messages, etc.” are all education records, and this investigator makes no finding that they are education records because that is not essential to the conclusion in this report, that assumption would provide only the first of two steps in applying the access rights specified in the IDEA regulations to this complaint.

The access rights under special education law apply only when both of the conditions specified in 34 C.F.R. 300.613(a) are present. That is, in order to have a right to access a record under this regulation, that record must be both an education record and a record that is “collected, maintained, or used by the agency under this part.”

“This part” refers to Part B of the IDEA. Thus, the right of a parent to access records under this regulation is more limited than the general right of a parent to access records under FERPA. Under FERPA a parent has a right to access any of the education records of their child. Under the IDEA regulations, the parent’s right to access education records is limited to their child’s education records that are collected, maintained, or used under Part B (Kansas adds the state special education laws and regulations). Those records might include items such as Individual Education Programs (IEPs), IEP team notes at an IEP team meeting, Prior Written Notices (PWNs), evaluation and reevaluation reports; Alternative Educational Settings for disciplinary removals that constitute a change of placement; Independent Educational Evaluations (IEEs), and other records collected, maintained or used for special education matters.

Nothing in the facts of this case supports a finding that the surveillance video, along with other “statements, emails, text messages, etc.” that are the subject of this complaint were collected, maintained, or used by the district due to a special education requirement or for a special education purpose. The incident involved two students involved in a physical engagement with each other. The incident was witnessed by school personnel and was also caught on a video surveillance camera used to monitor the student population as a whole. The disciplinary action involved an after-school detention, not a suspension, much less a suspension that triggered rights or responsibilities under special education laws and regulations. There is no evidence that any special education service was missed, or that any special education placement was changed, or that any special education process was used or required as a result the incident. There is no evidence that any of this student’s rights or protections under special education laws and regulations was, in any manner, affected by the way the district proceeded in the incident or in the following discipline. Rather, the evidence

supports a finding that the information contained in the surveillance video and in statements, emails, and text messages regarding this incident, were collected, maintained, and used by the district to address the physical incident that occurred between these two students in the same way the information would have been used in any similar event involving the general education population. The evidence presented makes it clear that there was simply no connection between how this information was collected, maintained, or used and this student's status as a child with a disability.

This distinction is important because Kansas regulation K.A.R. 91-40-51(a) states that in order to file a special education complaint, the complaint must include: (1) a statement that the agency has violated a state or federal special education law or regulation; and (2) the facts on which that statement is based. Likewise, federal regulation 34 C.F.R. 300.153(b) requires that the complaint include an allegation of a violation of Part B and the facts upon which the allegation is based.

For the reasons stated above, this investigator finds that this complaint fails to state a factual basis to support a violation of any IDEA or Kansas special education statute or regulation, specifically including the access provision of 34 C.F.R. 300.613, which requires parental access to education records of their child that are collected, maintained, or used for special education purposes .

Conclusion

The allegation of a violation of federal and/or Kansas special education laws or regulations is not substantiated.

Right to Appeal

Either party may appeal the findings in this report by filing a written notice of appeal with the State Commissioner of Education, Special Education and Title Services, Landon State Office Building, 900 SW Jackson Street, Suite 620, Topeka, Kansas 66612-1212 within 10 calendar days from the date the final report was sent. For further description of the appeals process, see Kansas Administrative Regulations 91-40-51 (f), which is attached to this report.



Mark Ward
Attorney II
Special Education and Title Services
(785) 296-0920
mward@ksde.org
www.ksde.org

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K.A.R. 91-40-51(f)(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).