

KANSAS STATE DEPARTMENT OF EDUCATION
SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT
FILED AGAINST
UNIFIED SCHOOL DISTRICT # 265
ON SEPTEMBER 11, 2023

DATE OF REPORT OCTOBER 9, 2023

This report is in response to a complaint filed with the Kansas State Department of Education on behalf of ----- by his mother, ----- . In the remainder of the report, ----- will be referred to as "the student." ----- will be referred to as "the complainant" or "the parent." ----- is the student's father and in the remainder of the report will be referred to as "the father." Together, ----- and ----- will be referred to as "the parents."

The complaint is against USD #265, Goddard Public Schools. In the remainder of the report, USD #265 will be referred to as "the district", "the local education agency (LEA)", or "the school."

The Kansas State Department of Education (KSDE) allows for a 30-day timeline to investigate a complaint from the date in which it was filed. A complaint is considered filed on the date in which it was received by KSDE. In this case, the KSDE initially received the complaint on September 11, 2023 and the 30-day timeline ended with this report on October 9, 2023.

Evidence Reviewed

During the investigation, the Complaint Investigator, Gwen Beegle, spoke with the parent on September 27, 2023 to clarify the complaint and reviewed all evidence and documentation that was provided by both the district and the complainant.

The following persons were interviewed: Jordan Funk (Principal Discovery Intermediate School) on October 2, 2023; Jess Herbig (Special Education Director, Goddard Special Education Cooperative) on October 2, 2023; the parent on October 3, 2023. Mike Gibson (Special Education Teacher, Discovery Intermediate School) on October 2, 2023 and the parent on October 3, 2023. A person recommended by the parent responded to a question by email but declined to be interviewed.

In addition to the interviews listed above, the following documentation and information were used in consideration of the issue(s):

1. Messenger exchange between the parent and Stephanie Brown-Miller (former district employee) dated February 17, 2023 at 12:46 to 1:00 p.m.
2. Folder "Records given to [student initials] parent" containing 73 student special education school records dated from February 24, 2017 to May 15, 2023

3. Letter and Formal Complaint 23FC265-001 from Brian Dempsey (Assistant Director Special Education and Title Services, KSDE) to the parents, Jess Herbig (Special Education Director, Goddard Special Education Cooperative) dated March 20, 2023.
4. Letter from Jess Herbig to Brian Dempsey co-signed by the parents dated March 22, 2023.
5. Email from Jordan Funk to father dated March 24, 2023 at 10:18 a.m.
6. Email from Jordan Funk to Jess Herbig, dated March 24, 2023 at 10:21 a.m.
7. Email exchange between the parent, Tiffany Spradling (Administrative Assistant Discovery Intermediate School) and Jordan Funk (Principal Discovery Intermediate School) with entries beginning March 29, 2023 at 10:17 a.m. and ending March 29, 2023 at 4:11 p.m.
8. Personal notes of staff interviews, dated March 29, 2023; April 18, 2023; and May 3, 2023.
9. Slideshow "Discovery PD Covering FERPA and Confidential" and professional development agenda dated April 10, 2023
10. The student's IEP dated April 25, 2023 and amended on May 15, 2023
11. Email exchange between the parent and Tiffany Spradling dated July 27, 2023 at 12:16. and 12:58 p.m.
12. Authorization from St. Mark's School to release records sent to the district and signed by the parent on July 31, 2023
13. Slideshow "Welcome Back District Orientation Goddard Public Schools" dated August 11, 2023
14. Email exchange between the parent, Jess Herbig and Melissa Owen (Records Clerk) dated August 11, 2023 at 3:38 p.m. through August 11, 2023 at 3:55 p.m.
15. Email from the parent and Melissa Owen dated August 11, 2023 at 4:42
16. The parent's request to the Goddard Special Education Cooperative for student records dated August 11, 2023
17. Email exchange between Melissa Owen and the parent dated August 21, 2023 at 8:45 a.m. and 8:54 a.m.
18. Email exchange between Melissa Owen and the parent dated August 25, 2023 at 8:18 a.m. to 8:38 a.m.
19. Email from the parent to Jess Herbig and Melissa Owen dated August 27, 2023 at 11:26 a.m. and Jess Herbig's reply to the parent dated August 28, 2023 at 8:21 a.m.
20. Email from Goddard Human Resources Department to employees entitled Required Employment Videos Frontline dated September 4, 2023
21. Screenshot of FERPA-HIPPA training provided to staff, undated
22. Goddard School District Student Privacy Policy undated
23. The district's response to the allegations dated September 28, 2023

Background Information

The student attended USD #265 from fall, 2017 through spring, 2023 and has since moved out of the district. The student is an 11-year-old boy who has been in special education since early childhood, first in noncategorical special education with a secondary speech language disability in another state. During the 2022-23 school year, he was identified as a student with autism and speech language disorder, and the effect of his disability was described as “social affective stereotypic behavior with accompanying cognitive disabilities that cause him to have difficulty functionally acquiring and socially appropriately using grade-level concepts within text, reading, and ELA content within the large general education curriculum setting without environmental/instructional support and adult assistance with cueing.” His IEP included speech language therapy, special education support in general education science, social studies, field trip, music classes and physical education (partial), with special education classroom services in ELA and math. His goals targeted speech, oral reading with retelling, oral reading fluency, reading comprehension, writing, solving word problems in math, and social interaction.

Issues Investigated

Issue One: The USD #265 has, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to safeguard confidential information, specifically that the teacher shared confidential information regarding the student to persons who were not on the student’s team. (Page 4)

Issue Two: The USD #265 has, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide the parent access to documents, specifically the testing and progress monitoring documents following a parental request for all school records. (Page 6)

Issue One

The USD #265 has, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to safeguard confidential information, specifically that the teacher shared confidential information regarding the student to persons who were not on the student’s team.

Applicable Law

Federal regulations implementing IDEA at 34 C.F.R. 300.622 require that parent consent must be obtained before personally identifiable information is disclosed to any party, other than officials of the public agency with a right to know. Further, all persons collecting or using personally identifiable information must receive training or instruction regarding the state’s policies and procedures on safeguards (34 C.F.R. 300.623(c)).

Federal regulations implementing IDEA at 34 C.F.R. 300.32 state that the term “personally identifiable information” (PII) means information that contains the name of the child, the child’s parent, or other family member; the address of the child; a personal identifier, such as the child’s social security number or student number; or a list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty. A student’s disability status and any information about a student’s IEP services would fall under the definition of PII.

Analysis: Findings Of Fact

The complainant alleged that during the 2022-23 school year, the student’s special education teacher sought to change the child’s placement to a different special education classroom. In doing so, the complainant alleged that the teacher spoke with several members of the school staff who were not on the student’s team. The complainant also alleged that the teacher informed other members of the school staff that the parent filed a formal complaint as well as the substance of the complaint. The parent named teachers and paraeducators who spoke with her at the time regarding the teacher’s efforts to move the student’s classroom. In August, 2023, in a conversation with a paraeducator formerly at the student’s school, the parent was allegedly informed that the student’s teacher disclosed confidential information in an effort to have the student’s placement altered during the 2022-23 school year.

The district responded that the district had investigated the substance of the parent’s prior formal complaint, offering a resolution that was accepted by the parent in this matter. The resolution was filed with the KSDE and the complaint was withdrawn. The district also responded that its investigation found only the parent disclosed information about the formal complaint improperly when she spoke of it within earshot of other children. The district responded that the principal moved the student out of the teacher’s classroom at the parent’s request and held professional development on confidentiality with all building staff.

Findings of the investigation, based on interviews and documents reviewed are:

- The parent filed a formal complaint with KSDE-SETS which was later withdrawn after reaching a resolution with the district, as documented in a letter co-signed by the parents and the district and sent to KSDE-SETS, dated March 22, 2023. To resolve the complaint with the parent, the district agreed to change the student’s special education teacher and classified staff for the remainder of the 2022-23 school year, to hold professional development on confidentiality for the school building, and to meet about confidentiality with staff listed in the complaint. The district reported and provided documentation that the schedule change and professional development was completed. The district reported that one-to-one meetings were held with relevant staff and provided personal notes of each meeting.
- The district reported and provided documentation that during the spring, 2023 semester four staff persons were interviewed regarding failure to safeguard

confidentiality. The district reported and provided personal interview notes to show that the interviews did not find evidence of confidentiality violations that occurred during the 2022-23 school year.

- The parent reported that a paraeducator said that one of the individuals who were interviewed by the district stated their awareness of the issue in the complaint. The district reported that this was countered by direct interview with that person.
- The parent reported that another teacher in the building spoke with her regarding the allegations of confidentiality violations in the building. During an interview with the complaint investigator, the teacher stated that they had no recollection of the discussions related to the complaint.
- The district reported that when a teacher has a concern about a special education student in the building, it is policy and practice that the case would be brought before the Child Study Team. In this case, the student's case was reviewed by the Child Study Team, and the district reported and provided that Child Study Team's report to the parent on April 6, 2023. The parent affirmed that she received it.
- The parent reported that in August, 2023 a person formerly employed as a special education paraeducator in the student's school informed the parent that the violations of confidentiality which had been investigated by the district in the 2022-23 school year had occurred. This person, when contacted by the complaint investigator, reported no knowledge of the issue and declined to be interviewed further.

In this case, there is no available evidence to support that the violations of the student's confidentiality alleged by the complainant occurred during the 2022-23. The district reached a resolution agreement with the parent on March 22, 2023 which led the parent to withdraw the prior complaint without an investigation by KSDE-SETS. The district showed that it conducted an internal investigation that found no evidence of confidentiality violations. The district provided professional development on FERPA and confidentiality for the school staff April 10, 2023, which was in addition to the regular yearly training required of staff members in the district. The district changed the student's schedule at the parent's request so that the student could receive special education services from staff persons not involved in the parent's concerns regarding confidentiality. The district reported that the child study team process was used to provide problem solving and support to the student's team during the 2022-23 school year, and that the parent was provided a copy of the child study team report.

Conclusion

Based on the foregoing, it *is not substantiated* that USD#265 has, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to safeguard confidential information, specifically that the teacher shared confidential information regarding the student to persons who were not on the student's team.

Issue Two

The USD #265 has, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide the parent access to documents, specifically the testing and progress monitoring documents following a parental request for all school records.

Applicable Law

Federal statutes and regulations at 34 C.F.R. 300.613 and state regulations at 91-40-50(b) state that the district must permit parents to inspect and review any educational records related to the student that are collected, maintained, or used by the district under Part B of IDEA and state law. This includes the parent's right to request copies of the records and the district's obligation to respond without unnecessary delay, in no case more than 45 days.

Analysis: Findings Of Fact

The complainant alleged in the written complaint that she requested all of the student's school records from the district and that she had not received all of them, specifically testing and progress report data. The complainant alleged that she received only the IEPs from the district. The complainant alleged that the student's K-2 records were not made available to her from the student's school of attendance during that period of time.

The district responded that the parent requested the student's records from the student's school on July 27, 2023 and that these were provided on that same day. The district responded that the parent requested the student's records to the district office and the special education department on August 11, 2023 and the records were copied and provided to the parent on August 25, 2023, 14 days after the parent's request. Following that, the district reported that the parent reported that she wanted all the students' records and that the package provided only included IEPs but not all the student's testing, grades, and other information. The district responded that they directed the parent to the school buildings for records other than those held by special education. In each instance of the parent's request for records, the district personnel invited the parent to contact them if further assistance was needed.

Findings of the investigation, based on interviews and documents reviewed are:

- The district reported that it provided the student's special education records from the beginning to ending of the student's attendance in the district, a total of 75 documents. The parent and the district agreed that the records were provided in hard copy and the parent picked them up at the district office on or around August 25, 2023.
- The investigator provided a list of these 75 documents to the parent, who confirmed she received 25 of them and that these records included current and past records

dating from 2017, the first year the student attended the district, to 2023 when the student left the district.

- The district reported and the parent agreed that she received the general education records from the student's elementary and intermediate school history, grades 3-5.
- The parent reported that she did not receive the student's general education records from the building that the student attended during K-2.

In this case, it is found that the district received a request for the student's special education records and that it provided records to the parent within 14 days of the parent's request. The parent confirmed receipt of records, which she categorized as "only IEPs" but upon further examination also included other documents related to the student's special education in the district. However, the parent did not confirm that she received each of the records that the district reported to provide. While it cannot be completely confirmed by the investigator, it is likely that the parent received some but not all the documents on the district's list of the student's special education records. It is noted that the district intended to provide all the documents to the parent and that the administration believed it had done so. It is further noted that, prior to the complaint, the district personnel offered to assist the parent to receive any documents that she believed were missing.

The parent's request for the student's K-2 grades and other records held by the general education administration is outside the authority of this IDEA complaint investigation.

Conclusion

Based on the foregoing, it *is substantiated* that USD #265 has, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide the parent access to documents following a parental request for all school records.

Summary Of Conclusions/Corrective Action

Issue One: A violation of 34 C.F.R. 300.622 was not found, based on the previously stated facts. Corrective action is not required.

Issue Two: A violation of 34 C.F.R. 300.613 was found, based on previously stated facts. Corrective action is required.

CORRECTIVE ACTION:

- a. Within 21 days of this report, USD #265 shall submit a written statement of assurance to Special Education and Title Services (SETS) stating that it will comply with federal regulations at 34 C.F.R. 300.613.
- b. Within 21 days of this report, USD #265 shall provide to the parent a hard copy of each of the Part B IDEA documents listed as evidence in this complaint investigation.
- c. **CORRECTIVE ACTIONS: Due by October 30, 2023**

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).

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