

KANSAS STATE DEPARTMENT OF EDUCATION
SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT
FILED AGAINST
UNIFIED SCHOOL DISTRICT #361
ON SEPTEMBER 21, 2023

DATE OF REPORT OCTOBER 21, 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," "the parent," or "the mother."

The complaint is against USD #361. In the remainder of the report, USD #361 will be referred to as "the district".

The Kansas State Department of Education (KSDE) allows for a 30-day timeline to investigate a complaint from the date on which it was filed. A complaint is considered filed on the date on which it was received by KSDE. In this case, the KSDE initially received the complaint on September 21, 2023 and the 30-day timeline ends on October 21, 2023.

Evidence Reviewed

During the investigation, the Complaint Investigator, Dr. Donna Wickham reviewed all evidence provided by the district and the complainant(s). Additionally, the Complaint Investigator interviewed -----, Mother, Ms. Eryn Guy, Principal, Ms. Amber Zwierzychowski, Special Education Teacher, Ms. Theresa Ricke, ESL Para Educator, and Mr. Randy Lemon, Horticulture Teacher. The following documentation and information were used in consideration of the issue(s):

1. IEP Snapshot for IEP dated September 9, 2022
2. *Email from Special Education Teacher to Teachers dated August 3, 2023 at 8:21 AM*
3. *Email from Horticulture Teacher to Special Education Teacher dated August 30, 2023 at 3:16 PM*
4. *Handwritten teacher note dated between September 4 and September 11, 2023*
5. *Handwritten teacher note dated September 15, 2023*
6. *Handwritten teacher note dated September 16, 2023*
7. *Handwritten teacher note dated between September 18, 2023*
8. District response dated October 5, 2023
9. *Email exchange between the Complaint Investigator and Parent dated October 10 between 9:59 AM and 11:51 AM*

10. Email exchange between Complaint Investigator and Superintendent dated between October 10, 2023 at 10:11 AM and October 11, 2023 at 10:34 AM
11. USD 361 Employee Handbook
12. IBH-IKCA Student, Community, Curriculum document
13. Kansas Educator Code of Conduct

Background Information

The student attends the district's high school as a twelfth grader. He is eligible for special education under the eligibility category of specific learning disability and has received special education and related services since Kindergarten. The student attends general education classes with special education staff support each day during classroom instruction for Math, ELA, Social Studies and Science for the same frequency and duration as general education peers. He has goals related to reading comprehension and exploring careers and receives accommodations related to learning and testing.

Issue Investigated

Issue One

USD #361, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to maintain confidentiality about a student's special education program during the 2023 school year.

Applicable Law

Federal/State statutes and regulations at 34 C.F.R. § 300.323(d)(1) and K.A.R. 91-40-16(4) state, each public agency must ensure that the child's IEP is accessible to each regular education teacher, special education teacher, related services provider, and any other service provider who is responsible for its implementation.

Further, 34 C.F.R. § 99.31(a)(1), states an educational agency or institution may disclose personally identifiable information from an education record of a student without the consent required by § 99.30 if the disclosure meets one or more of the following conditions: (A) The disclosure is to other school officials, including teachers, within the agency or institution whom the agency or institution has determined to have legitimate educational interests.

Analysis: Findings of Fact

The Parent alleged that on Wednesday, September 13, 2023 the Student was in the Teacher's classroom taking notes with a laptop. The Teacher called the Student to the Teacher's desk and read the modifications from the Student's IEP aloud, stating that taking notes with a laptop was not one of the IEP modifications. The Parent stated that she did not find out about this situation until the Student's sibling told the Mother on Friday, September 15, 2023. The Mother

clarified the situation with the Student and subsequently contacted the Student's Special Education Teacher who in turn contacted the Principal. The Principal set up a meeting with the Parent on September 18, 2023. The Parent stated that the Principal agreed what the Teacher did was wrong. The Parent additionally requested that following the incident she would like the Student moved out of that class so there would not be another incident. Initially the request was declined, but after reconsideration the Student was moved to a different class.

The District acknowledged in their response dated October 5, 2023 that the Teacher called the Student to the Teacher's desk to review the IEP. They further stated that the high school administration was made aware of the parent concern on September 16, 2023 and request for a class change on September 18, 2023. While the request for a change of classroom was initially denied the Student was allowed to transfer to a different classroom. A conversation regarding special education and IEP confidentiality did take place between the Teacher and the Principal the week of September 18, 2023.

The Special Education teacher reported during interview and documentation showed that the Student's IEP Snapshot was sent to the Teacher in an email dated August 30, 2023 at 8:21 AM. And stated,

Good Morning! I am reaching out to you with information about senior [Student] who I will be serving as an IEP case manager this school year. My records show that [Student] will be in your classroom this year. Here is some information you will find in sic [Student] Snapshot IEP. [Student] Disability category is Specific Learning Disability. The attached information contains the minimum accommodations and modifications legally guaranteed to [Student] in [Student] IEP. You may add more supports in your classroom if you think they are necessary and will assist [Student] in being successful in your classroom. If you choose to print the information, please keep it in a locked file cabinet or drawer...Also, please do not share the digital copies with anyone, including other staff. This information is need to know.

Documentation showed that the Teacher responded to the Special Education teacher's email in a reply on Aug 30 at 3:16 PM.

The District stated in their October 5, 2023 response, "As IEP notes or content are shared with teachers, a confidentiality reminder is consistently implemented. This same confidentiality topic is reviewed during IEP meetings as well."

A teacher note provided by the Special Education Teacher recorded that the Teacher had approached her sometime between September 4, 2023 and September 11, 2023 and discussed alternate ways for students to write notes after the Teacher expressed his opinion that written student notes were important.

The Teacher who was the subject of the complaint stated during an interview on October 9, 2023 that on Wednesday, September 13, 2023 students in the classroom were completing

independent paper and pencil seatwork when the teacher noticed the Student on his laptop and prompted the Student to complete the assigned work, because it was possible the Student was not working on the assignment. The Student responded that he was working on his assignment and stated he can use his laptop to type his responses because he has an IEP. In response the teacher asked the Student to come to the teacher's desk and electronically accessed the IEP with the Student. The teacher stated he was aware the information was confidential and for that reason called the student over to his desk for a private conversation rather than continue the interaction in a large group. The teacher stated his goal in this exchange was to review the Student's accommodations together. The teacher reported that the Student was in the class two additional days after the September 13, 2023 incident and the student did not express any concerns about the interaction.

One additional staff member was in the classroom during the incident on September 13, 2023 and during an interview on October 9, 2023 stated she did not know the teacher and student were discussing the Student's IEP. She stated that she was unable to hear what the Teacher and Student were discussing and surmised she was present during the incident afterward because of her knowledge that the student had an IEP with accommodations. She stated that there were five students and no other staff in the classroom at the time of the incident and they were equally distant from the Teacher and Student incident. She further stated she had not heard of any other incidents and in fact did not know about the incident in spite of being in the classroom at the time when it was occurring.

The Student's annual IEP meeting was held Friday morning, September 15, 2023 with the Student, Parent, and Teacher in attendance and the incident was not brought up.

The Special Education Teacher reported that she was observing students in the Teacher's class on Friday, September 15, 2023 during 3rd period and was present in the classroom with the Teacher and Student and observed,

"[Teacher] approached [Student] and [another student] table and told [Student] that he was fine with him typing his notes and would talk to his Mom anytime she wanted. Next, he approached and asked each of the other students if it was okay if they did their notes differently. After that he rotated around the room checking in with the other students and answered questions as they arose."

The Parent stated she learned of the incident on Friday evening, September 15, 2023 from the Student's sibling who was not present during the incident but learned of it from the Student during discussion between Wednesday and Friday.

The Parent stated she contacted the Student's Special Education Teacher about the incident on Friday, September 15, 2023 but reached her on Saturday (September 16, 2023) by phone. The Parent and Special Education Teacher agreed that they spoke, and the Special Education Teacher spoke with the Student as well.

The Special Education Teacher stated during the interview on October 9, 2023 that she contacted the Principal on Saturday, September 16, 2023 about the incident.

The Principal during the October 9, 2023 interview stated she learned of the complaint on the Saturday, September 16, 2023 from the Special education Teacher. During interview she stated she called the Teacher in the following Monday and spoke about confidentiality with special education documents and reached out to the Special Education Cooperative serving this District to learn if there was additional training.

The USD 361 Employee Handbook documented, " As a district we adhere to the Kansas Educator Code of Conduct found here." [hyperlink to the pdf document]

The Kansas Educator Code of Conduct includes the following:

"Inappropriate conduct includes, but is not limited to the following: Sharing confidential information concerning student academic and disciplinary records, health and medical information, family status/income and assessment/testing results unless disclosure is required or permitted by law."

District staff reported during interviews that they follow the Kansas Educator Code of Conduct regarding student confidentiality. All district staff further reported they were aware that student special education records are confidential and are shared on a need-to-know basis and if existing in paper form should be kept locked.

Conclusion

The District acknowledged that a Teacher incorrectly read the Student's accommodations aloud in the classroom where another staff person and other students were present. During separate interviews with the two staff persons who were present in the classroom at the time of the incident both stated that other students did not hear anything and further were not aware of the incident. The Teacher stated that the incident occurred in response to the Student saying aloud in the classroom that he had an accommodation in his IEP. The Teacher described during the interview that he was aware of IEP confidentiality of special education documents and that is why he asked the Student to come to his desk to review the IEP accommodations.

No staff interviewed whether present or not present for the incident stated any other students had confidential special education information incorrectly shared. Document review showed that the District has procedures in place and trains staff to protect confidential special education materials. Documentation further shows that the special education teacher includes reminders of the confidential nature of the special education records when distributing them to general education teachers who provide instruction to eligible students. The District addressed confidentiality for students who qualify for special education services with the

Teacher within one week of the incident demonstrating that they take confidentiality of special education records and documents seriously.

Based on the regulation stating that the general education teacher had a right to access the confidential records (34 C.F.R. § 300.323(d)(1) and K.A.R. 91-40-16(4)), the materials had been shared reminding the teacher of the confidentiality of the records and that the teacher stated he called the student to his desk in response to the student stating he had an IEP to discuss is privately it is not substantiated that USD #361 failed to maintain confidentiality about a student's special education program during the 2023 school year. Finally, the district immediately acted to respond to the allegation with training and conversation with the Parent rather than conduct a full investigation demonstrates that the district treats student confidentiality consistent with their district procedures.

Summary of Conclusions/Corrective Action

1. **ISSUE ONE:** A violation of 34 C.F.R § 300.323(a)(1), K.A.R. 01-40-16(4) and 34 C.F.R § 99.31(a)(1) was not found, based on the documentation, interviews, and review of the federal and state regulations.

It is noted that the District proactively addressed confidentiality of special education documentation and any corrective action that would have been considered has already been implemented by the District.

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)