

KANSAS STATE DEPARTMENT OF EDUCATION
SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT
FILED AGAINST
UNIFIED SCHOOL DISTRICT #261
ON MAY 8, 2024

DATE OF REPORT JUNE 4, 2024

This report is in response to a complaint filed with the Kansas State Department of Education on behalf of -----, by his parents, ----- . In the remainder of the report, ----- will be referred to as “the student.” ----- will be referred to as “the mother”. ----- will be referred to as “the father”. Collectively, the parents will be referred to as “the parents”, or “the complainants”.

The complaint is against USD #261, Haysville Schools. In the remainder of the report, USD #261 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 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 May 8, 2024, and the 30-day timeline ends on June 8, 2024.

Evidence Reviewed

During the investigation, the Complaint Investigator, Ashley Niedzwiecki, reviewed all evidence and documentation, which was provided by both the district and the complainants. The following documentation and information were used in consideration of the issues:

1. Parent’s written allegations. [E.1]
2. District’s written response to the allegations. [E.2]
3. Information gathered during an interview, with the parents, conducted on May 13, 2024. [E.3]
4. Information gathered during an interview, with the Director of Special Services, Dr. Angie Karraker, conducted on May 21, 2024. [E.4]
5. Information gathered during a second interview with the parents, conducted on May 22, 2024. [E.5]
6. Emergency Safety Intervention (ESI) Report dated April 4, 2024 [E.6]
7. Parent’s ESI Notification Letter dated April 5, 2024. [E.7]

Background Information

The student is currently a second-grade student attending Rex Elementary in the district. The student has been identified as a student with an exceptionality. The student was initially

enrolled in the district during the 2021-2022 school year as a first grader. Both parents teach in the district.

Issues Investigated

1. **ISSUE ONE**: Whether USD #261, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), improperly disclosed educational records with a district employee(s) following an incident on April 4, 2024.

The parents allege additional allegations in the formal complaint. However, following a review of the written complaint, [E.1] and discussions with the parents, [E.3] it was determined that KSDE does not possess jurisdiction over these matters. Therefore, the following issues will not be investigated. Both parties were notified of the decision not to investigate these issues prior to the completion of this investigation.

2. **ISSUE TWO**: Whether USD #261 properly followed Emergency Safety Intervention (ESI) procedures.
3. **ISSUE THREE**: Whether USD #261 improperly permitted a district employee to engage with the student, resulting in threats and slander against the student.
4. **ISSUE FOUR**: Whether USD #261 engaged in retaliatory behaviors against the parents following both 1) a request for the district to cease any interaction between a specific Safety Resource Officer (SRO) and the student and 2) the filing of a police report against the SRO.

These issues may be handled through the district's internal review process, the district's human resource department, and/or the Office of Civil Rights.

Issue One

Whether USD #261, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), improperly disclosed educational records with a district employee(s) following an incident on April 4, 2024.

Applicable Law

Under state and federal law, districts are required to protect the privacy of any student, or student's family, regarding personally identifiable records, files, and data directly related to the student. (K.S.A 72-6311(b)(2); 34 C.F.R. 300.610). Personally identifiable information includes but is not limited to, information such as the name of the child, the child's parents; address; personal identifiers such as the child's social security number or student number; indirect identifiers, such as the student's place of birth or mother's maiden name; other information that, alone or in combination, is linked or linkable to a student that would allow a reasonable person in the school community, without personal knowledge of the relevant circumstances, to identify the student with reasonable certainty; or information requested by a person who the

LEA reasonably believes knows the identity of the student to whom the education records relate. (K.A.R. 91-40-50; 34 C.F.R. 300.32; 34 C.F.R. 99.3).

Unless a parent consents to the release, or a Family Education Rights and Privacy Act (FERPA) exception applies, a district must prevent the disclosure of personally identifiable information to any unauthorized person. (34 C.F.R. 300.622). Disclosure means “to permit access to or the release, transfer, or other communication of personally identifiable information contained in education records by any means, including oral, written, or electronic means, to any party except the party identified as the party that provided or created the record”. (34 C.F.R. 99.3).

FERPA regulations allow some exceptions to the requirement to obtain parent consent before releasing records. All of these exceptions also apply to the confidentiality requirements in the federal special education regulations (34 C.F.R. 300.622(a)). One such exception is:

- Disclosure in connection with a health or safety emergency, if knowledge of the information is necessary to protect the health or safety of the student or other individuals (34 C.F.R. 99.31(a)(10)).

Findings

The parents allege the district improperly disclosed personally identifiable information, related to the student, following an Emergency Safety Intervention (ESI) incident on April 4, 2024. [E.1] According to the parents, the principal of the elementary school, Ms. Laura Rogers, “broke FERPA by calling (the father’s) employer and providing his boss with all the details of (the) April 4th situation.” [E.1.] The parents claim Ms. Rogers “spoke freely” to the high school Assistant Principal, Ms. Cochran, about “our son, his IEP, & consequences.” [E.1] The district claims no email communication was exchanged between the principals of the schools, and nothing in the record, or from the parents refutes this claim. [E.2]

The parents and the district agree the student was involved in an ESI on April 4, 2024. [E.3, E.4, E.5] Documents show Emergency Safety Interventions were executed between 1:23 pm and 1:44 pm. [E.2, E.6] The district and the parents confirm that following the ESI, the principal of the elementary school, Ms. Rogers, attempted to contact the father on this cell phone, without success. [E.2, E.4, E.5] All parties verify the mother was not contacted on the date of the incident, nor did any party attempt to contact her. [E.4, E.5] The record shows a notice of the ESI was properly provided to both parents on April 5, 2024. [E.7]

The parties further agree that following an attempt to contact the father, Ms. Rogers called the high school and spoke with Assistant Principal, Ms. Cochran. [E.2, E.4]. Both parties state that no message was left on the father’s cell phone. [E.4, E.5] The district and the parents offer slightly varied accounts as to what was disclosed during the conversation between the principal of the student’s school of attendance (Ms. Rogers), and the assistant principal of the father’s school of employment (Ms. Cochran).

An Interview with Dr. Karraker, and written statements from Ms. Rogers and Ms. Cochran reveal:

- Ms. Rogers recalled contacting Ms. Cochran and stating, “I cannot get ahold of (the father) on his cell phone and it is important that I speak to him right away. Can you get him a message to call me?” [E.2]
- Ms. Cochran recalled that Ms. Rogers telephoned the high school and Ms. Cochran answered. [E.2] Ms. Cochran states that Ms. Rogers informed her that “she needed to speak with (the father) regarding his child.” Ms. Cochran asserts that Ms. Rogers did not share information regarding the student’s name or any specifics of the reason for the phone call. [E.2]
- A school administrator located the father in the school gym and directed him to go to Ms. Cochran’s office. Once there the father was told to call Ms. Rogers. He did so from Ms. Cochran’s office phone. Dr. Karraker could not recall whether Ms. Cochran stayed in the office or left while the father made the phone call. [E.4]

According to the parents:

- The father did miss a phone call from Ms. Rogers on April 4, 2024. He was unable to answer due to teaching a class at the time. [E.5]
- Soon after, the father was in the gym, helping with preparations for graduation, when the building Principal, Mr. Seeley, located him and asked him to go to Ms. Cochran’s office. According to the father, Mr. Seeley did not indicate why Ms. Cochran needed to speak with him. [E.5]
- Once at Ms. Cochran’s office, the father stated Ms. Cochran told him there was an incident at the elementary school involving his son, that several Safety Resource Officers were involved, and that he needed to call Ms. Rogers right away. [E.5]
- The father states Ms. Cochran excused herself from the office, and once alone, he called Ms. Rogers from the office phone. [E.5.]
- Following this, the father explained to Ms. Cochran that he needed to leave to deal with an incident involving his son at his son’s school. [E.5]
- The father claims once he arrived at the elementary school, the situation was as Ms. Cochran described, specifically that there were several SROs involved. [E.5]

Additional statements were gathered during interviews, including:

- The district states it is not always necessary to contact a parent as soon as an ESI occurs. Depending on the situation, building administrators may wait to notify the parent until after the situation is under control. [E.4]
- The district states since an SRO was involved in this situation, and there was a physical threat of harm to the student or others, Ms. Rogers felt it was necessary to contact the parent as quickly as possible. [E.4]
- The parents state this incident was no worse than other incidents, and in fact, was less serious than some. [E.5]

- The parents state the mother was called to help de-escalate situations in the past. However, the district has recently stopped notifying her because the district felt it was interrupting her ability to perform her job responsibilities. [E.5]. The district does verify this. [E.4]
- The parents state that “Ms. Cochran didn’t even know (the father) had a child in the district before the phone call.” [E.5]
- Both parties agree the district has contacted the father, during past incidents involving the student, and left messages on his cell phone, without contacting high school administrators. [E.4, E.5]

Analysis

Confidentiality is important, especially when dealing with a student’s educational records. The Individuals with Disabilities Act (IDEA) adopted FERPA regulations as they apply to parents’ rights regarding their children’s education records, including the right to consent to the disclosure of personally identifiable information. The IDEA also adopted exceptions to the requirement of parental consent, under certain circumstances.

In this case, documents show, and all parties agree, that a phone call was placed, and a conversation had, between the elementary school principal, Ms. Rogers, and the high school assistant principal, Ms. Cochran. A phone call alone does not violate FERPA regulations; however, the dialogue occurring during a phone call may violate FERPA regulations. As noted above, a FERPA violation occurs if a disclosure was made that permitted access to or the release, transfer, or other communication of *personally identifiable information* contained in education records by any means, including oral communication. (34 C.F.R. 99.3). To determine if FERPA was violated, it must first be determined whether the information communicated was *personally identifiable information* under the law.

Under state and federal law, personally identifiable information includes information such as the name of the child, the child’s parents; personal identifiers such as the child’s social security number or student number; indirect identifiers, such as the student’s place of birth or mother’s maiden name; other information that, alone or in combination, is linked or linkable to a student that would allow a reasonable person in the school community, without personal knowledge of the relevant circumstances, to identify the student with reasonable certainty; or information requested by a person who the LEA reasonably believes knows the identity of the student to whom the education records relate.

There is nothing in the record, from either the district or the parents, to indicate the name of the student was revealed, or that any other personal information, such as the student’s ID number was shared. The parents do allege, in their written complaint, that Ms. Rogers communicated information related to the student’s IEP and student consequences because of the April 4th, 2024, incident. However, the record does not substantiate this, and the parents offer no evidence in support of this claim.

Furthermore, neither the parents nor the district, indicate the disclosure of any indirect information related to the student, or that information was requested by a person the LEA reasonably believes knows the identity of the student.

There is also no evidence in the record to show that a reasonable person in the school community would be able to identify the student, with reasonable certainty, without personal knowledge of relevant circumstances based on the information relayed to Ms. Cochran. The weight of the evidence, provided by all parties, suggests that Ms. Rogers communicated to Ms. Cochran only that the father needed to contact her because of a situation occurring with his child. This limited information neither revealed the student's name nor any other identifiable information. Moreover, even if Ms. Rogers had revealed that SROs were involved, as the parents claim, this information does not rise to a level that would allow a reasonable person, in the school community, to identify the student with any reasonable certainty. As noted by the parents, "Ms. Cochran didn't even know (the father) had a child in the district before the phone call." If that is the case, it is even more unlikely that Ms. Cochran could be certain of a specific student's identity simply because Ms. Rogers suggested that an SRO was involved in a situation.

Therefore, because the information communicated was not personally identifiable information, the district did not violate FERPA.

Even if the information communicated to Ms. Cochran included personally identifiable information, the information meets one of the FERPA exceptions. As stated above, disclosure of personally identifiable information is permitted, without parental consent, if disclosed in connection with a health or safety emergency, if knowledge of the information is necessary to protect the health or safety of the student or other individuals (34 C.F.R. 99.31(a)(10)). As stated by the district, and confirmed by the record, the student's behavior had escalated to the degree that an Emergency Safety Intervention was needed. An ESI is used when a student presents a reasonable and immediate danger of physical harm to self or others. The use of an ESI suggests a circumstance in which the health or safety of the student was in question.

Additionally, interviews reveal the district had included the parents in such situations, to de-escalate the student, especially if an SRO was involved or there was the danger of a physical threat to the student or others. The district states that since the situation posed a physical threat, Ms. Rogers felt it necessary to contact the father as soon as possible. Here, the weight of the evidence suggests Ms. Rogers may have conveyed the urgency of the situation to Ms. Cochran, as it connected to the health or safety of the student but did not reveal details of the student's education record. Therefore, even if the information was personally identifiable information, it meets a FERPA exception not requiring parental consent to disclose.

Conclusion

Based on the foregoing, a violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), specifically that the district improperly disclosed educational records with a district employee(s) following an incident on April 4, 2024, *is not substantiated*.

Summary of Conclusions/Corrective Action

ISSUE ONE: Whether USD #261, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), improperly disclosed educational records with a district employee(s) following an incident on April 4, 2024, *is not substantiated*.

- a. No corrective action is required.

Investigator

Complaint Investigator:

Ashley Niedzwiecki

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)