

KANSAS STATE DEPARTMENT OF EDUCATION  
SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT  
FILED AGAINST  
UNIFIED SCHOOL DISTRICT #259  
ON JUNE 4, 2024

DATE OF REPORT JULY 2, 2024

This report is in response to a complaint filed with our office on behalf of a student, \_\_\_\_\_, by their parent, \_\_\_\_\_. In the remainder of the report, the student will be referred to as “the Student” and the parent as “the Parent.”

The Complaint is against USD # 259 Public Schools. In the remainder of the report, the “School” and “District” shall refer to USD #259.

The Kansas State Department of Education (KSDE) allows for a 30-day timeline to investigate a child complaint. A complaint is considered to be filed on the date it is delivered to both the KSDE and the school district. In this case, the KSDE initially received the complaint on June 4, 2024, and the 30-day timeline ended on July 5, 2024.

### **Investigation of Complaint**

Tania Tong, the Complaint Investigator, asked the Parent written questions on June 25, 2024, and received a written response from the Parent on the same day. The District’s Special Education Director was interviewed on June 27, 2024.

The Complaint Investigator also received emails from the Parent and the District between June 4, 2024 and June 27, 2024.

In completing this investigation, the Complaint Investigator reviewed documentation provided by the Parent and the District. Although additional documentation was provided and reviewed, the following materials were used as the basis of the findings and conclusions of the investigation:

Provided to the Parent by the District as part of the March 18, 2024 records request:

1. Elementary Progress Report, 2022-2023
2. Elementary Progress Report, 2023-2024
3. Lawrence Elementary School Profile, 2023-2024
4. Notice of Meeting, 02/27/24
5. Individualized Education Program, 03/18/24
6. IEP Progress Report - Annual Goal, 03/08/24
7. Multidisciplinary Team Report (MTR), 03/21/23

8. Evaluation Sheets, 04/08-04/30/24
9. Evaluation Reports, various dates 2024
10. Family Educational Rights and Privacy Act (FERPA) Request, 03/15/24
11. Notice of Meeting, 03/02/23
12. IEP, 03/21/23
13. Immunization History, 03/19/24
14. Push In Session Notes, 04/23/24
15. Push In Session Notes, 04/18/24
16. Push In Session Notes, 04/11/24
17. Push In Session Notes, 04/09/24
18. Push In Session Notes, 04/04/24
19. Push In Session Notes, 03/28/24
20. Push In Session Notes, 03/21/24
21. Evaluation Sheets, 03/20-04/04/24

From the District:

1. Student Records and Your Rights, 01/2023
2. IEP, 03/18/24
3. IEP & 504 Team Meeting Notes
4. IEP, 03/18/24 [provided]
5. Prior Written Notice, 03/18/24
6. Family Educational Rights and Privacy Act (FERPA) Request, 03/15/24 [provided]
7. P5501 Privacy of Student Records Board Policy, 01/21
8. Wichita Public Schools Administrative Guidelines: FERPA, 04/20
9. Email, re: [Student], 04/19/24
10. Email, re: FERPA Request, 05/01-05/03/24
11. Email, re: Speech Docs, 05/06/24
12. Email, re: [Student] FERPA, 06/11/24

### **Background Information**

This investigation involved a preschool-aged student enrolled at Lawrence Elementary in USD #259.

The March 2014 revision of District Board Policy P5501 Privacy of Student Records described that the District had established procedures to control the release of student information to individuals and organizations both inside and outside the school system. These procedures complied with the Family Educational Rights and Privacy Act (FERPA) and related regulations.

(D29)

The District Administrative Guidelines for FERPA described the definitions and procedures for the District's implementation of related guidelines. (D30-D49) The Family Educational Rights and Privacy Act (FERPA) from the District described "THE RIGHT TO INSPECT AND REVIEW THE STUDENT'S EDUCATION RECORDS WITHIN 45 DAYS OF THE DAY THE DISTRICT RECEIVES A REQUEST FOR ACCESS. Parents or eligible students should submit to the school principal a written request that identifies the record(s) they wish to inspect. The principal will make arrangements for access and notify the parent or eligible students of the time and place where the records may be inspected." (D4)

### **Issue One**

Whether USD #259, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide the Parent with speech logs from August to December 2023 within the allowable 45 calendar days when the Parent made a FERPA request on March 18, 2024 for "all speech records for 2023-2024 school year."

### **Positions of the Parties**

The Parent alleged that the District did not provide the speech logs/data for the Student from August 2023 through December 2023.<sup>1</sup>

The District's position is that the District "is not in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA) by failing to provide the Parent with speech logs from August to December 2023 within the allowable 45 calendar days when the Parent made a FERPA request on March 18, 2024 for "all speech records for 2023-2024 school year."

The District believed that they had fulfilled their obligations under FERPA by providing the requested educational records, including speech records, to the parents by May 1st. They assert that the raw data from speech sessions were incorporated into the IEP progress reports, which were then made available to the parents through various channels, including ParentVue. The District maintains that the IEP progress reports are the official educational records in this case and that any raw data not included in these reports are not considered educational records under FERPA. The District is willing to provide any additional educational records if the parents can specifically identify them but believes that they have already provided all relevant records.<sup>2</sup>

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<sup>1</sup> Issues Letter, June 6, 2024

<sup>2</sup> USD 259 Response to 24FC259-004

## Findings of the Investigation

The following findings are based on a review of documentation from both parties, a written response from the Parent, and an interview with the District.

1. On March 15, 2024, the Parent sent a request for records to the District, "seeking access to all academic records pertaining to [the Student], including but not limited to service delivery data, occupational therapy records, speech therapy records, and any other relevant services related to [their] education. Specifically, we request access to both hard data and raw data associated with these services in accordance with FERPA. This includes assessments, progress reports, individualized education program (IEP) Documentation, and any other pertinent information that contributes to our child's educational experience and progress." The District noted receipt of the request on March 18, 2024. (D28)
2. An IEP dated March 18, 2024, identified the student as a three-year-old eligible for special education with a Developmental Delay. The reevaluation will be due on March 20, 2026. **The IEP indicated the following:**
  - a. The Student's communication and social skills delays impacted the Student's learning. The Student's communication needs were addressed by Speech-language services that "will be provided directly, and communication needs will be monitored and addressed by the [Speech Language Pathologist] (SLP) and/or classroom staff. ... Progress on speech-language goals will be measured by classroom teacher observation and/or SLP data/observation."
  - b. The Student had preschool functional, social, and speech goals.
  - c. "Speech[-]language services will be provided directly for a total of 45 minutes per week. They will typically be provided without non-exceptional peers for a total of 15 minutes every week and with non-exceptional peers for a total of 30 minutes every week."
  - d. Parent Rights were provided at the IEP meeting. (D7-D22)
3. A Prior Written Notice for the IEP meeting was hand-delivered on March 18, 2024. (D23)
4. On April 19, 2024, the Parent emailed the Principal inquiring about their FERPA records request. The Principal responded the same day and shared, "Since this request and the IEE request came at the same time, I was advised to involve our district legal department." The Principal indicated they shared the request with that department and that they would reach out to the Parent. (D52)
5. The timeline for communication and release of records included:
  - a. On May 1, 2024, the Associate General Counsel sent the Parent a password-protected link to "the documents associated with your FERPA request" that would expire on June 1, 2024. The password was sent in a separate email. (D53-D54) That same day, the Associate General Counsel responded and indicated that they added additional records to the link. (D55)

- b. On May 2, 2024, the Parent emailed and indicated they did not see the “speech records from before March 30th.” (D56)
  - c. On May 3, 2024, the Associate General Counsel indicated they would see if they “can track those down.” (D61) That same day, the Parent emailed the District and reminded them that the original date of the FERPA request was March 18, 2024. (D58)
  - d. On May 6, 2024, the Parent emailed the District, “Just checking in to see how the speech documents for the FERPA request were going since they were due in the 45-day period which was MAY 2.” The Associate General Counsel emailed the Parent the same day and wrote, “... the last set of notes were uploaded. The file is called “[XX] Notes.pdf.” (D63)
  - e. On June 10, 2024, the Parent requested another link to the Student’s documents. On June 11, 2024, the Associate General Counsel resent the link and indicated that the same password applied. (D64)
6. The District provided the following documents to the Parent as part of the records request made by the Parent on March 18, 2024:
- a. Notice of Meeting, 3/2/23 (PP42-PP43);
  - b. Multidisciplinary Team Report (MTR), 3/21/23 (PP27-PP35)
  - c. IEP, 3/21/23 (PP44-PP60);
  - d. Elementary Progress Report, 4th quarter, 2022-2023 (PP1);
  - e. Elementary Progress Report, 1st-3rd quarter, 2023-2024 (PP3-PP4);
  - f. Synergy Student Profile, 2023-2024 (PP8)
  - g. Notice of Meeting, 2/27/24 (PP9-PP10)
  - h. IEP Progress Report, 3/8/24 (PP25-PP26)
  - i. IEP, 3/18/24 (PP11-PP24)
  - j. Parent FERPA Request, 3/15/24, received on 3/18/24 (PP41);
  - k. Immunization history, 3/19/24 (PP61);
  - l. Student raw speech data from the following dates:
    - i. 3/20/24, 3/21/24, 3/28/24 (PP72-PP76)
    - ii. 4/4/24, 4/9/24, 4/11/24, 4/18/24, 4/23/24 (PP63-PP70)
    - iii. 4/8/24, 4/9/24, 4/10/24, 4/16/24, 4/17/24, 4/18/24, 4/22/24 (PP36)
    - iv. 4/23/24, 4/30/24 (PP37)
  - m. Student speech notes and service calendar from the following dates:
    - i. 1/23/24, 1/29/24, 1/30/24, 2/1/24, 2/5/24, 2/6/24, 2/12/24, 2/20/24, 2/22/24, 2/26/24, 2/27/24, 2/29/24, 3/4/24. (PP38-PP40)
7. In a written response to the Complaint Investigator dated June 25, 2024, the Parent indicated they were informed of the Student’s speech progress: “... [the Student] speech progress was reported to us at [their] conferences when we met with the teacher and SLP in person. On my end I was never as concerned about any specific

updates or progress, I asked when I felt needed and was never met with any pushback."  
(Email from Parent to Complaint Investigator, June 25, 2024)

8. During interviews with the Complaint on June 27, 2024, the District's Special Education Director indicated that "once [staff] have used those data in whatever format," the raw data is not required to be maintained by staff. "The raw data [from August- December 2023] were used for the progress reports for the IEP for both [the] first and second quarters. And once those data were used in the aggregate form to answer those questions on the IEP progress reports for the speech-related goals that they were destroyed in some way." (Special Education Director Interview, June 27, 2024)

### **Applicable Regulations and Conclusions**

This complaint investigation may only address alleged violations of Part B of the Individuals with Disabilities Education Act or violations of Kansas Special Education statutes and regulations. Although the FERPA regulations are not subject to this complaint process, they are similar to Special Education regulations that are subject to this complaint. For that reason, interpretations of FERPA regulations by courts usually also apply to Special Education records. According to the pertinent federal and state special education regulations, 34 C.F.R. 300.613(a) and K.A.R. 91-40-25 (a), parents of exceptional children have the right to inspect and review their child's education records maintained by the school district. The school must comply with the parent's request for records without unnecessary delay and no later than 45 days after the request is made. Additionally, parents have the right to participate in meetings regarding their child's identification, evaluation, educational placement, and provision of a Free Appropriate Public Education (FAPE).

During interviews, the District indicated that raw data is not maintained once the information has been included in the appropriate documentation, such as IEPs or IEP progress reports. The District provided the Parent with all of the information that was available and retained in the Student's educational record at the time the request for records was made. The following chart indicates that the District provided the Parent with the educational records that were available at the time the Parent made the request on March 18, 2028.

Documents Requested by the Parent	Provided by District
All academic records	Elementary progress reports
Service delivery data	Speech service calendar 1/23-3/4/24
Occupational therapy records	N/A; not a related service on the current IEP
Speech therapy records	Speech notes 1/23-3/4/24
Other relevant records (assessments, progress reports, individualized education program (IEP) Documentation)	IEP progress reports, MDT report, IEP 3/21/23 and 3/18/24,
Hard/Raw data associated with Speech	Raw speech data, 3/20/24-4/30/24
Hard/Raw data associated with OT	N/A; not a related service on the current IEP

The Supreme Court has interpreted “maintained” as “to keep in existence or continuance; preserve; retain” and reasoned that “[t]he word ‘maintain’ suggests FERPA records will be kept in a filing cabinet in a records room at the school or on a permanent secure database.” The District did not “maintain” the requested data in the manner required to qualify as an educational record. The practice of not maintaining raw data once progress reports are created demonstrates that the District practice is not “to keep in existence or continuance; preserve; retain” this data.<sup>3</sup>

Based on the foregoing, according to IDEA and Kansas special education regulations 34 C.F.R. 300.613(a) and K.A.R. 91-40-25 (a), *it is not substantiated* that the district failed to provide the Parent with educational records in the District’s possession.

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<sup>3</sup> Owasso Indep. Sch. Dist. No I-011 v. Falvo, 534 U.S. 426, 432033 (2002)

### **Investigator**

Tania Tong, Licensed Complaint Investigator

## **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](mailto: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)