

SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 23-175

PROCEDURAL HISTORY

On December 11 and 12, 2023, the Office of Superintendent of Public Instruction (OSPI) received two Special Education Community Complaints from the parent (Parent) of a student (Student) attending the Snoqualmie Valley School District (District). The Parent alleged that the District violated the Individuals with Disabilities Education Act (IDEA), or a regulation implementing the IDEA, regarding the Student's personally identifiable information and ensuring confidentiality in accordance with WAC 392-172A-05180 and WAC 392-172A-05245, in relation to incidents described in the Parent's community complaint.

On December 11 and 12, 2023, OSPI acknowledged receipt of the complaints and forwarded a copy of it to the District superintendent on December 15, 2023. OSPI asked the District to respond to the allegations made in the complaint.

On December 22, 2023, OSPI received the District's response to the complaint and forwarded it to the Parent the same day. OSPI invited the Parent to reply. The Parent did not provide a written reply in this matter.

On January 18, 2024, the OSPI complaint investigator reached out to offer interviews with the Parents, leaving messages on voicemail and via text. The Parents returned the call on Tuesday January 23, 2024.

On January 29, 2023, the OSPI complaint investigator and the Parent connected for an interview.

OSPI considered all information provided by the Parent and District as part of its investigation.

ISSUE

1. Whether the District followed proper procedures for ensuring the confidentiality of the Student's personally identifiable information in accordance with WAC 392-172A-05180 and WAC 392-172A-05245, in relation to the incidents described in the Parents' community complaint request.

LEGAL STANDARDS

Confidentiality of Education Records: FERPA requires districts to maintain the confidentiality of students' education records. 34 CFR §300.623; WAC 392-172A-05230. FERPA controls the circumstances under which a district may disclose personally identifiable information from educational records, and prohibits non-authorized disclosure of that information. As a general rule, personally identifiable information may not be disclosed without specific, informed parental consent. This rule is subject to a number of exceptions, including the allowance for school districts to disclose information to teachers within the district or officials of participating agencies for purposes of meeting a requirement of the Act. 34 CFR §300.622; WAC 392-172A-05225.

Disclosure of Student Records: Parental consent must be obtained before personally identifiable information is disclosed. If a request for personally identifiable information is received from officials with a participating agency, parental consent is not required. Additionally, parental consent may not be required if the information is contained in education records and the disclosure is authorized without parental consent under FERPA, 34 CFR Part 99. 34 CFR §300.622; WAC 392-172A-05225.

Lists of Types and Locations of Records: Each school district or other public agency must provide parents (and adult students) on request a list of the types and locations of educational records collected, maintained, or used by the agency. 34 CFR §300.616; WAC 392-172A-05205.

FINDINGS OF FACT

1. At the start of the 2023–24 school year, the Student was eligible for special education services under the category of autism, was in the sixth grade, attended a District middle school, and her October 27, 2023 IEP was in effect.
2. On November 23, 2023, the Parents were alerted by another family in the District that the Student’s IEP notes, with the Student’s name, health history, and program specifics, had been attached to the other family’s child’s in-class work packet. The other family’s child was in the Student’s class.

In their complaint, the Parents alleged that this violated student confidentiality under the IDEA and FERPA.

3. On December 1, 2023, the District’s interim director of student services received an email from the Parents, requesting an in-person meeting about the incident, and the alleged breach of privacy for the Student. The District responded on the same day to arrange for the meeting.
4. On December 5, 2023, an in-person meeting took place between the Parents and District, and the Parents notified the District of the confidentiality breach from November 23, 2023.
5. Also, on December 5, 2023, a District staff member emailed a link to the Parents through the District email service, with a link to a third-party photography site with photos of the Student taken inside the special education life skills classroom during a special event. The photo link from the photography website (pixieset) provided photo purchase options and was not password protected. The Parent provided a copy of the email sent by the District case manager with this link and the corresponding instructions for photo purchase to OSPI.
6. On or around December 5 and 6, 2023, the Parent contacted the photography website to request the removal of the photos of the Student. The Parents then received an email from the photography company, which indicated that the photos in the gallery were linked to a separate gallery and store service. The photography company directed the Parents to the photographer and District staff, to make changes directly and remove the photos of the Student.

7. Later, on December 5, 2023, at 8:48 pm, the Parents contacted the District to report that the photos of students in a life skills special education class, during a school event, were posted on a non-District endorsed website. The Parents alleged that this was a confidentiality breach for the students, including their Student, in the photos.
8. On December 6, 2023, a District discrimination incident reporting form related to discrimination allegations made by the Parent, was shared with the District's executive director of human resources and associate superintendent of secondary teaching and learning; the District superintendent was also verbally notified, and the District initiated an investigation into the incident.
9. On December 6, 2023, the District determined that the Student would be transferred from the case manager's caseload and classroom.
10. On December 7, 2023, the District responded to the Parents' communications and updated the family that the Student would be transferred to another teacher's caseload and classroom, and the District also requested a meeting and plan to transition the Student back to school. The District also informed the Parents of the status of the discrimination incident report investigation.
11. Also, on December 8, 2023, the District reported that the principal contacted the case manager and directed that all student photos be removed from the website.
12. At the time of this investigation, it was confirmed and corroborated that the photos were no longer available using the link that was sent to the Parents.
13. On December 11, 2023, the District and Parents met to discuss the Student's new classroom and schedule.
14. On December 21, 2023, the District provided a detailed response to this special education community complaint and a proposed a corrective action plan. In the District response, the District provided copies of correspondence between the District and Parent, copies of the District's student records policy and procedures, and acknowledged that the case manager did not follow the student records policy and procedures, which resulted in the Student's personally identifiable information being released to classmates, their families and potentially, the public.

The District additionally identified and proposed corrective actions, including training on student confidentiality laws, and a formal investigation of the discrimination incident reported.

CONCLUSIONS

Confidentiality of Education Records – The Parent alleged the District violated FERPA and the IDEA when the District did not ensure the confidentiality of the Student's personally identifiable information in accordance with WAC 392-172A-05180 and WAC 392-172A-05245, and that the District released personally identifiable information to the Student's classmates in a work packet,

and sent via District email service a link to a third party photography site with photos of the Student taken inside of the special education life skills classroom during a special event that was not password protected, so these photos were open to the public.

FERPA requires districts to maintain the confidentiality of students' education records. As outlined in stated special education regulations, FERPA controls the circumstances under which a district may disclose personally identifiable information from educational records and prohibits non-authorized disclosure of that information. As a general rule, personally identifiable information may not be disclosed without specific, informed parental consent. This rule is subject to a number of exceptions. The failure to maintain confidentiality in both instances outlined in this complaint are not included in these exceptions, and the District did not have the Parents' consent to release confidential Student information, which included information from the Student's IEP and photographs. The District did take reasonable and responsive steps to address the Parent's concern, by communicating quickly and clearly with the Parents, directing the teacher to remove the photos, and transferring the Student to another teacher caseload and classroom.

The District conceded that it did not follow proper procedures for ensuring the confidentiality of the Student's personally identifiable information in accordance with WAC 392-172A-05180 and WAC 392-172A-05245, in relation to the incidents described in the Parents' community complaint request. The District proposed corrective action, specifically training, which OSPI finds appropriate.

CORRECTIVE ACTION

By or before **February 23, 2024, March 15, 2024, and May 3, 2024**, the District will provide documentation to OSPI that it has completed the following corrective action.

STUDENT SPECIFIC:

None.

DISTRICT SPECIFIC:

Training

The District will provide training on the following topics:

- How to ensure the confidentiality of student personally identifiable information in accordance with WAC 392-172A-05180 and WAC 392-172A-05245.
- The District's adopted Board Policy and Procedure regarding student records.

The District will determine the staff who are required to attend this training and will propose the attendees to OSPI for review and approval.

By or before **February 23, 2024**, the District will notify OSPI of the name of the trainer and the list of required attendees at the training.

By or before **March 15, 2024**, the District will submit a draft of the training materials for OSPI to review. OSPI will approve the materials or provide comments by March 29, 2024.

By **April 26, 2024**, the District will conduct the training regarding the topics raised in this complaint decision.

By **May 3, 2024**, the District will submit documentation that required staff participated in the training. This will include 1) a sign-in sheet from the training, and 2) a separate official human resources roster of all staff required to attend the training, so OSPI can verify that all required staff participated in the training.

The District will submit a completed copy of the Corrective Action Plan (CAP) matrix, documenting the specific actions it has taken to address the violations and will attach any other supporting documents or required information.

Dated this 7th day of February, 2024

Dr. Tania May
Assistant Superintendent of Special Education
PO BOX 47200
Olympia, WA 98504-7200

THIS WRITTEN DECISION CONCLUDES OSPI'S INVESTIGATION OF THIS COMPLAINT

IDEA provides mechanisms for resolution of disputes affecting the rights of special education students. This decision may not be appealed. However, parents (or adult students) and school districts may raise any matter addressed in this decision that pertains to the identification, evaluation, placement, or provision of FAPE to a student in a due process hearing. Decisions issued in due process hearings may be appealed. Statutes of limitations apply to due process hearings. Parties should consult legal counsel for more information about filing a due process hearing. Parents (or adult students) and districts may also use the mediation process to resolve disputes. The state regulations addressing mediation and due process hearings are found at WAC 392-172A-05060 through 05075 (mediation) and WAC 392-172A-05080 through 05125 (due process hearings.)