

**COMPLAINT INVESTIGATION  
CLARK COUNTY SCHOOL DISTRICT  
(#CL050123)**

**Report Issued on June 23, 2023**

**INTRODUCTION**

On May 1, 2023, the Nevada Superintendent of Public Instruction received a State Complaint from a Parent alleging violations by Clark County School District (CCSD) in a student's special education program. The allegations in the Complaint were that CCSD denied the student a Free Appropriate Public Education under IDEA and a provision of the Nevada Revised Statutes (NRS) or Nevada Administrative Code (NAC), Chapter 388, specifically 34 C.F.R. §§300.320 to 300.324, 300.17, 300.613 and 34 C.F.R. 300.322 (parent participation).

While the filed State Complaint narrowly met the required content in IDEA, 34 C.F.R. §300.153(b)(4), and NAC §388.318(4), the above-described use of citations of law in lieu of the specific allegations of noncompliance required NDE to ascertain the specific allegations through the alleged facts supporting the statement of noncompliance. As a further complication, the Parent filed an intended State Complaint on March 29, 2023 that did not meet the required content under IDEA in several regards and, therefore, NDE did not have jurisdiction over the intended complaint. The Parent raised this prior intended filing as a rationale for an exception to the requirement in IDEA and NAC that a Complaint must allege a violation that occurred not more than one year prior to the date that the Complaint is received. 34 C.F.R. §300.153(c); NAC 388.318(2)(b); *Discussion in the 2006 IDEA regulations: Federal Register / Vol. 71, No. 156 / Monday, August 14, 2006 / Rules and Regulations, pg. 46606*. However, IDEA and NAC, Chapter 388, do not provide an exception to this filing timeline and the Parent was informed that all of the allegations regarding the provision of a Free Appropriate Public Education to the student and the student's IEP, including the Parent's participation in the development/revision of the IEP, that occurred prior to May 1, 2022 were not within the jurisdiction of NDE to investigate.

The remaining allegation with regard to CCSD's violation of 34 C.F.R. §300.613 in reference to the disclosure of education records to CCSD personnel on May 18, 2022 was within the jurisdiction of NDE to investigate. (While the Parent also provided facts related to CCSD's refusal to amend the student's education records on May 17, 2022 and June 10, 2022 through the hearing process under IDEA, 34 C.F.R. §300.619, the Parent's statement of the alleged violations did not include either this allegation or, given the Parent's decision to cite authority rather than state the violation, the relevant citations. In the course of the investigation, the Parent indicated an intent to file an amendment to the May 1, 2023 State Complaint to include this allegation, but did not do so.

The Parent's proposed resolution was that the student's education record be amended immediately to remove all information and detail around the behavioral incident that occurred on March 30, 2022 and the Parent receive a hard copy of the student's education records. In addition, the Parent proposed that once these changes were made, staff training should be provided to all district special education staff to ensure all staff have an accurate understanding of IDEA and State special education rules and regulations, including laws around education records and parent rights, in order to ensure a Free Appropriate Public Education to the student and all students.

## **COMPLAINT ISSUE**

The allegation in the Complaint that is under the jurisdiction of NDE to investigate through the special education complaint process raises the following issue for investigation:

### **Issue:**

In response to the Parent's May 18, 2022 request to access the student's education record, whether CCSD's disclosed the requested education record to the CCSD Superintendent, the Superintendent's secretary, and the CCSD school principal and, if so, whether the disclosure complied with the requirement of parental consent under IDEA and NAC, Chapter 388.

In the May 8, 2023 issue letter to CCSD, NDE requested additional documents and information in order to investigate the State Complaint. CCSD was notified in that same correspondence that if CCSD disputed the allegations of noncompliance in the Complaint, the submitted documents and information must include a denial of the alleged noncompliance; a brief statement of the factual basis for the denial; and specifically reference the documentation provided to NDE that factually supported the denial and that a failure to do so by May 31, 2023 or an extended timeline authorized by NDE, would be considered a concession of noncompliance for purposes of the State Complaint. CCSD did timely respond and dispute the allegation of noncompliance in the Complaint in its entirety and specifically referenced the indexed and well-organized documents relevant to that denial. Notwithstanding CCSD's denial of noncompliance, CCSD's response did include a proposal that specific CCSD personnel participate in the annual FERPA compliance training to resolve the Complaint, if NDE determined a violation had occurred.

The State Complaint, additional documents and information provided by the Parent in the oral interview with NDE, CCSD's denial of all claims, and all documents submitted by CCSD in response to the issues in the Complaint were reviewed and considered in the investigation of this Complaint. The Findings of Fact cite the source of the information determined necessary to resolve the issues in this Complaint and the original source document, where available, was relied upon.

## **FINDINGS OF FACT**

1. The student is a student with a disability who was enrolled in CCSD in the 2021/2022 school year.
2. On April 8, 2022, the student's Parent made a written request to the principal of the student's school to see the student's education record and the education record of the student's sibling. The Parent was referred to the CCSD's Public Record's Request Office. (April 8, 2022 Parent Email Communication, April 12, 2022 CCSD Email Communication)
3. CCSD provided the student's requested education records to the Parent in printed form, except for the emails the Parent requested from the CCSD Community Service Department which were sent to the Parent via email. (May 31, 2022 CCSD Email Correspondence)
4. On May 9, 2022, CCSD emailed the documentation responsive to the Parent's public records request for emails. In response to the Parent's inquiry regarding student files, the CCSD document control specialist informed the Parent that it was her understanding that the student files would be provided by the school principal and that the region superintendent and principal were copied in the email since they could address further concerns. (May 9, 2022 and May 10, 2022 CCSD Email Correspondence)

5. The Parent responded to the CCSD document control specialist that she could include the region superintendent and the school principal, but that they had nothing to do with the Parent's request. (May 10, 2022 Parent Email Correspondence)
6. The Parent signed a May 9, 2022 Student Records Release form attached to the transmittal of the education records that said: "On this date I have received a copy of the academic records of the above named student. This is in compliance with the "Family Rights and Privacy Act of 1974." (Student Records Release Form)
7. In a phone conversation on May 17, 2022 with the CCSD region superintendent's administrative secretary (hereinafter administrative secretary or secretary), the Parent informed the secretary that the email communication with the attached requested records had not been received. After speaking to the Parent, the administrative secretary requested the document control specialist resend the requested education records to the Parent. (CCSD May 17, 2022 Email Communication)
8. On May 18, 2022, the disclosure date at issue, the CCSD document control specialist resent the student's education records to the Parent electronically and copied the administrative secretary. (Close in time, on May 16, 2022, in response to an apparent inquiry from the CCSD's region superintendent's office, the CCSD document control specialist also provided the region superintendent's administrative secretary a copy of the email and attachments previously sent to the Parent. (May 16, 2022 – May 20, 2022 Email Correspondence)
9. On May 20, 2022 the Parent thanked the CCSD document control specialist for completing the Parent's request but asked why the administrative secretary was copied on private information regarding her children that was attached. (May 18 – 20, 2022 Email Correspondence)
10. It is uncontested that the documentation attached to the May 18, 2022 email correspondence contained personally identifiable information with regard to the student(s). (Complaint, Response)
11. CCSD has a policy of disclosing education records to individuals who meet the conditions of a "school official" with a legitimate educational interest. (CCSD Special Education Procedures Manual, Section 10.5.4)
12. The CCSD's local regulations and annual legal notices to parents that includes the Family Educational Rights and Privacy Act (FERPA), specify that in CCSD, school officials may include the Board of Trustees, administrators, certificated support staff, and contractors, consultants, volunteers, and other parties performing outsourced institutional services or functions. "Legitimate educational interest" is defined as any activity having a direct effect on advancing a student's educational level, coupled with a concern for the student's social, emotional and/or physical welfare. (CCSD Regulation 5125.1, 2021-2022 Annual Legal Notices)
13. Pertinent to this Complaint, as a certificated support staff, the administrative secretary is a school officials with access to personally identifiable information. (List of CCSD Personnel with Titles with Access to Personally Identifiable Information (PII), CCSD Regulation 5125.1, 2021-2022 Annual Legal Notices)
14. No documentation was provided in the course of the investigation to support the secretary's receipt of the education records on May 18, 2022 as an activity having a direct effect on advancing a student's educational level, coupled with a concern for the student's social, emotional and/or physical welfare or otherwise required to meet a requirement of IDEA. (Review of Record)

15. No parental consent was sought by CCSD or provided prior to providing the administrative secretary access to personally identifiable information contained in the student's education records. (Review of the Record)

## CONCLUSIONS OF LAW

In accordance with IDEA, 34 C.F.R. §300.622, and NAC §388.289(3), parental consent must be obtained before personally identifiable information is disclosed to parties unless the disclosure is authorized without parental consent under 34 C.F.R. Part 99. (Title 34 C.F.R. Part 99 contains the regulations for the FERPA, 20 U.S.C. § 1232g.)

FERPA, 34 C.F.R. §99.31(a)(1)(i)(A), authorizes an educational agency or institution to disclose personally identifiable information from an education record of a student without parental consent if the disclosure is to other school officials within the agency or institution whom the agency or institution has determined to have legitimate educational interests. If an educational agency or institution has a policy of disclosing education records to school officials, the educational agency or institution must include in its annual notification of FERPA rights a specification of the criteria for determining who constitutes a school official and what constitutes a legitimate educational interest. 34 C.F.R. §99.7(a)(3)(iii).

With regard to electronic access, FERPA, 34 C.F.R. §99.31(a)(1)(ii), also requires an educational agency or institution to use reasonable methods to ensure that school officials obtain access to only those education records in which they have legitimate educational interests. An educational agency or institution that does not use physical or technological access controls must ensure that its administrative policy for controlling access to education records is effective and that it remains in compliance with the legitimate educational interest requirement in 34 C.F.R. §99.31(a)(1)(i)(A).

The United States Department of Education's Student Privacy Policy Office provides a Model Notification of Rights Under FERPA for Schools that includes the following with regard to the condition of a legitimate educational interest: "A school official typically has a legitimate educational interest if the official needs to review an education record in order to fulfill his or her professional responsibility."<sup>1</sup> Typically, NDE would apply the standards under IDEA and NRS/ NAC Chapters 388, in the determination of noncompliance through the State Complaint process. However, in this case, IDEA, through FERPA, limits the authorized disclosure without parental consent to the involved educational agency's policy and specification of the criteria standard in its annual notification of FERPA rights. 34 C.F.R. §§99.7(a)(3)(iii), 99.31(a)(1)(i)(A).

CCSD does have a policy of disclosing education records to individuals who meet the conditions of a "school official" with a legitimate educational interest and, in accordance with FERPA, 34 C.F.R. §99.7(a)(3)(iii), provides the included roles of school officials who meet the condition and the determination of a "legitimate educational interest" in its annual notification of FERPA rights. (Finding of Fact (FOF) #11) In CCSD, school officials may include the Board of Trustees, administrators, certificated

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<sup>1</sup> This Model Notice is publicly available at: <https://studentprivacy.ed.gov/node/490> . See also *Letter to Reisman* 60 IDELR 293 (OSEP November 30, 2012): "...Typically, a school official has a "legitimate educational interest" if the official needs to review an education record in order to fulfill his or her professional responsibility. Section 99.7(a)(3)(iii) of the FERPA regulations requires an educational agency or institution to include in its annual notification of rights under FERPA a statement indicating whether it has a policy of disclosing personally identifiable information under § 99.31(a)(1), and, if so, a specification of the criteria for determining which parties are school officials and what the agency or institution considers to be a legitimate educational interest." This policy letter is publicly available at: <https://sites.ed.gov/idea/idea-files/policy-letter-november-30-2012-to-judith-a-gran-and-catherine-merino-reisman/>

support staff, and contractors, consultants, volunteers, and other parties performing outsourced institutional services or functions. “Legitimate educational interest” is defined as any activity having a direct effect on advancing a student’s educational level, coupled with a concern for the student’s social, emotional and/or physical welfare. (FOF #12)

As such, CCSD has elected, permissibly, to narrow the definition of legitimate educational interest to the activities of a school official that have a “direct effect” on advancing a student’s “educational level, coupled with a concern for the student’s social, emotional and/or physical welfare.” (FOFs #11, #12) Therefore, pursuant to 34 C.F.R. §300.622, 34 C.F.R. §99.31(a)(1)(i)(A) and NAC §388.289(3), CCSD’s definition of “legitimate educational interest” is the standard applied in this investigation.

The May 18, 2022 disclosure of the student’s education records to a school official at issue in this case was caused by the transmission of personally identifiable information attached to email correspondence from CCSD personnel to the administrative secretary. (FOFs #8, #10) While the Parent requested the administrative secretary’s assistance in obtaining the student’s education records (FOFs #7, #9), this request for assistance does not constitute parental consent, 34 C.F.R. §§300.9, 300.300; NAC §388.300, and none was provided. (FOF #15)

As certificated support staff included in the published list of school officials, CCSD was authorized to disclose the student’s personally identifiable information to the administrative secretary. (FOF #13) However, in order to do so, the activity of the disclosure to the administrative secretary was also required to meet the CCSD’s definition of “legitimate educational interest.” (FOFs #12, #14)

It is recognized that the transmission of the email communications containing the student’s personally identifiable information to the administrative secretary may have been to confirm the Parent was provided access to the requested education records in accordance with IDEA/FERPA. However, that activity could have been accomplished without providing the administrative secretary access to the transmitted personally identifiable information. Therefore, it is determined that the transmission of personally identifiable information to the CCSD administrative secretary on May 18, 2022 is not reasonably supported by the documentation provided in the course of the investigation as meeting CCSD’s standard of the activity having “a direct effect on advancing a student’s educational level, coupled with a concern for the student’s social, emotional and/or physical welfare.”

As a final matter, the May 18, 2022 correspondence was not sent to the CCSD Superintendent and the school principal as alleged. However, it was noted that the CCSD region superintendent and school principal, two designated school officials (FOF #12), were copied on a prior email communication on May 9, 2022 from the CCSD Community Services Department with education records of the student attached. While related to the May 18, 2022 transmission of education records in response to the Parent’s request, this release of personally identifiable information was prior to the date specifically raised in the State Complaint as the alleged violation of IDEA and NAC, Chapter 388, and, even if intended to be included as another incident of noncompliance, insufficient documentation was provided in the course of the investigation to determine whether the disclosure to address the Parent’s “further concerns” constituted a legitimate educational interest in accordance with CCSD policy at the time of the disclosure. (FOFs #4, #5, #12)

*Therefore, in response to the Parent’s request to access the student’s education record, CCSD disclosed personally identifiable information to the CCSD administrative secretary on May 18, 2022 and the disclosure failed to comply with the requirement of parental consent under IDEA and NAC, Chapter 388.*

## **ORDER OF CORRECTIVE ACTION**

CCSD is required to take corrective action to address the violation found in this Complaint investigation, specifically, the unauthorized disclosure of personally identifiable information to a CCSD school official on May 18, 2022. Upon consideration of the Parent's proposed resolutions, the provision of the student's education records to the Parent and the amendment of the student's education records, the Complaint Investigation Team determined a student-specific corrective action was not required given the Parent had already received the student's education records and participated in the hearing process under IDEA, 34 C.F.R. §§300.618, 300.619, to request CCSD amend the referenced information in the student's education records. (FOFs #2 - 6, #8)

### **Systemic Corrective Action**

In accordance with NRS §385.175(6), NDE requests a plan of corrective action (CAP) from CCSD within 45 days of the date of this Report.

The proposed CAP must:

- A. Provide for the participation of the CCSD document control specialists and administrator in the CCSD's Community Services Department in CCSD's annual FERPA compliance training prior to school year 2023/2024 regarding the confidentiality of students' personally identifiable information, including the limitations on the authorized access of school officials and the established access controls described in B.
- B. Prior to CCSD's annual FERPA compliance training for school year 2023/2024, provide for the review and revision of CCSD policy (or development, if not already in CCSD written policy) to include the reasonable methods CCSD has established to ensure that school officials obtain access to only those education records in which they have legitimate educational interests in accordance with 34 CFR § 99.31(a)(1)(ii). Further, if CCSD does not use physical or technological access control, how CCSD will ensure that its administrative policy for controlling access to education records is effective and that it remains in compliance with the legitimate educational interest requirement. 34 CFR § 99.31(a)(1)(ii).

The CAP must be approved by the NDE prior to implementation. Within 15 days of completion of the CAP, documentation must be provided to NDE of the policies and procedures revised/developed and of the participation of the document control specialists and administrator in the CCSD's Community Services Department in CCSD's annual FERPA compliance training.