

**COMPLAINT INVESTIGATION
MINERAL COUNTY SCHOOL DISTRICT
(#MN051123)
Report Issued on July 7, 2023**

INTRODUCTION

On May 11, 2023, the Nevada Superintendent of Public Instruction received a State Complaint dated April 18, 2023 alleging a violation of the Individuals with Disabilities Education Act (IDEA) and Nevada Revised Statutes (NRS) or Nevada Administrative Code (NAC), Chapters 388, by Mineral County School District (MCSD).

The allegation in the Complaint was that MCSD violated the Family Educational Rights and Privacy Act (FERPA) and NAC 388.472¹ for a named student with an Individualized Education Program due to the disclosure of student information relating to the student's medical and mental health via text message, without consent from the student's parents. Further, it was alleged that the MCSD school official who sent the text provided a diagnosis out of the official's scope of practice.

The Complainant's proposed resolution was for proper training on FERPA, confidentiality and scope of practice for the involved school officials; proper documentation of all meetings with parents; a written complaint in the counselor's personnel file and an apology to the family. Given the Complainant's proposed resolution of the issuance of an apology, that Complainant was informed that if it is determined that MCSD violated the requirements of IDEA or Nevada law/regulations for special education programs, a corrective action would be ordered to address the needs of the student and the appropriate future provision of services for all students with disabilities. However, the Complainant was informed that ordering an apology does not meet those standards and, as a local matter, the proposed school personnel remedies are outside NDE's jurisdiction in this process. In addition, the Complainant was informed that the allegation regarding the school official's scope of practice and professional conduct are also not within the scope of the State Complaint process.

Given the Complainant was not the parent of the named student, the Complainant was informed that in accordance with IDEA, 34 C.F.R. §§300.9, 300.622, NDE must also obtain parental consent before personally identifiable information is disclosed to unauthorized parties. The Complainant provided the parent's required written consent.

In the May 18, 2023 issue letter to MCSD, Nevada Department of Education (NDE) requested additional documents and information in order to investigate the State Complaint. MCSD was notified in that same correspondence that if MCSD 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; reference to the provided documentation that factually supported the denial; and that a failure to do so by June 7, 2023, or an extended timeline authorized by NDE, would be considered a concession of noncompliance for purposes of the State Complaint.

MCSD did timely provide a concise response with the requested documentation and information. MCSD did not deny that MCSD failed to comply with IDEA, 34 C.F.R. §300.9 and §300.622, with respect to the disclosure of personally identifiable information concerning the student in a text message to three MCSD

¹ A complainant is not required to cite the specific provision of IDEA and/or NRS/NAC believed to be violated; therefore, this State Complaint was accepted notwithstanding the citation of law inapplicable to the alleged violation of IDEA or Nevada special education laws or regulations by a local education agency.

staff members and a member of a non-profit agency that works in partnership with MCSD. MCSD did indicate that some of the transmitted text message at issue in this Complaint may have been authorized without parental consent under FERPA; however, the majority was not.

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:

Whether MCSD disclosed personally identifiable information relating to the student in a text communication on or about April 6, 2023 from a MCSD employee to the MCSD Superintendent, “front office staff,” and a non-school employee and, if so, whether the disclosure complied with the requirement of parental consent under IDEA and NAC, Chapter 388.

Upon receipt of the State Complaint, MCSD took action to address the conceded unauthorized disclosure of personally identifiable information by advising staff that no disclosure of personally identifiable information should be made to third parties, including the non-profit agency, until parental consent had been obtained. MCSD also indicated in the response that a memorandum would be disseminated to all staff at the beginning of the 2023/2024 school year reminding them of the nondisclosure and consent requirements of FERPA and the additional nondisclosure and consent requirements under IDEA. In addition, MCSD has begun discussions with the non-profit agency to develop an umbrella Memorandum of Understanding that will describe in detail the requirements for obtaining parental consent consistent with FERPA and IDEA before any personally identifiable information is disclosed by MCSD staff to the non-profit agency staff.

The State Complaint and MCSD’s response, were reviewed and considered in their entirety 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. Given MCSD did not deny the unauthorized disclosure of the student’s personally identifiable information at issue, only those Findings of Fact relevant to the Conclusions of Law or Order of Corrective Action are provided below.

FINDINGS OF FACT

1. Student was enrolled in a school in MCSD in the 2022/2023 school year.
2. On or about April 6, 2023, a staff member at the student’s school sent a text summarizing a discussion with the student’s mother to three other MCSD staff members and a member of a non-profit agency that has worked in partnership with MCSD. (Complaint, MCSD Response)
3. The MCSD personnel who received a copy of the text containing personally identifiable information about the student were the school principal, who also was serving as the interim superintendent, and two secretaries for the school the student attended in the 2022/2023 school year. (Complaint, MCSD Response)
4. The non-MCSD personnel who received a copy of the text containing personally identifiable information about the student was a staff member of the non-profit agency who has oversight over the counseling and therapeutic services provided for the student. This individual forwarded the text to the Complainant who provides therapeutic services to the student. (Complaint, MCSD Response)

5. MCSD has a policy of disclosing education records to individuals who meet the conditions of a “school official” with a legitimate educational interest. (MCSD Notification of Rights under FERPA)
6. In MCSD, a “school official” is a person employed by the School as an administrator, supervisor, instructor, or support staff member (including health or medical staff); student teachers and related service interns; a person serving on the School Board; a person or company with whom the School has outsourced services or functions it would otherwise use its own employees to perform (such as an attorney, auditor, medical consultant, or therapist); a parent or student serving on an official committee, such as a disciplinary or grievance committee; or a parent, student, or other volunteer assisting another school official in performing his or her tasks. (MCSD Notification of Rights under FERPA)
7. In MCSD, a school official has a “legitimate educational interest” if the official needs to review an educational record in order to fulfill his or her professional responsibility. (MCSD Notification of Rights under FERPA)

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.) Disclosure includes permitting 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. 34 C.F.R. §99.3. “Personally identifiable information” is defined in NAC §388.076 as having the meaning ascribed to it in 34 C.F.R. §99.3. (See also 34 C.F.R. §300.32.)

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).

In this case, the disclosure of the student’s personally identifiable information was by electronic means, a text message. (Finding of Fact (FOF) #2) MCSD does have a policy of disclosing education records to school officials and includes the specification of the criteria policy in its annual notification of FERPA rights, as required pursuant to FERPA, 34 C.F.R. §99.7(a)(3)(iii). Notwithstanding this policy, MCSD conceded in this case that it failed to comply with IDEA with respect to the disclosure of personally identifiable information concerning the student in the referenced text message to the named recipients. (FOFs #3-#7)

Therefore, MCSD failed to comply with IDEA and NAC, Chapter 388 in the disclosure of personally identifiable information relating to the student in a text communication on or about April 6, 2023 from a MCSD employee to the MCSD Superintendent, “front office staff,” and a non-school employee.

ORDER OF CORRECTIVE ACTION

MCSD is required to take corrective action to address the violation found in this Complaint investigation, specifically, the unauthorized electronic disclosure of personally identifiable information in April 2023. While it has been determined that systemic corrective action is required, the Complainant did not request a student-specific corrective action to address the student's needs as a result of this noncompliance and it has been determined that none is warranted. As previously discussed, upon being notified of the incidence of noncompliance upon the filing of this State Complaint, MCSD took the initiative to remedy the noncompliance, and that is commendable. NDE considered and adopts MCSD's proposed prospective systemic corrective action in the ordered corrective action to address this incident of noncompliance with the student and to address the appropriate future provision of services for all students with disabilities.

Systemic Corrective Action

In accordance with NRS §385.175(6), NDE requests a plan of corrective action (CAP) from MCSD as soon as possible, but no later than 15 MCSD business days after the date of this Report. The CAP must include the following directed systemic actions, including the timeline within which they will be implemented, and must be approved by NDE prior to implementation:

- A. Dissemination of a memorandum to MCSD staff at the beginning of the school year who have access to personally identifiable information collected, used, or maintained under IDEA regarding the requirement of compliance with IDEA Part B in the protection of the confidentiality of the personally identifiable information, including the nondisclosure and consent requirements of IDEA Part B and FERPA. 34 C.F.R. §300.622.
- B. Prior to the first day of school for students in the 2023/2024 school year, the conduct of a training or instruction for personnel at the school the student attended in the 2022/2023 school year who collect or use personally identifiable information regarding the confidentiality of students' personally identifiable information, including disclosure by any means, including oral, written, or electronic means, and the consent requirements of IDEA Part B and FERPA. 34 C.F.R. §§300.622, 300.623(c).
- C. If MCSD will continue the partnership with the non-profit agency named in this Complaint in providing services and supports to MCSD students with disabilities, the development of a Memorandum of Understanding between MCSD and the non-profit agency that meets the requirements of FERPA, 34 C.F.R. §99.31(a)(1)(B), with regard to outsourced institutional services or functions or, alternatively, requires parental consent consistent with FERPA and IDEA before any personally identifiable information is disclosed by MCSD staff to the non-profit agency staff and the condition that the non-profit agency to whom the information is disclosed will not disclose the information to any other party without the prior consent of the parent. 34 C.F.R. §99.33.

Documentation of the completion of the CAP must be provided to NDE within 14 days of its completion.