

**DELAWARE DEPARTMENT OF EDUCATION  
EXCEPTIONAL CHILDREN RESOURCES**

**FINAL REPORT  
ADMINISTRATIVE COMPLAINT RESOLUTION**

**DE AC 14-2 (October 2, 2013)**

On October 2, 2013, Parent filed a complaint with the Delaware Department of Education (“DOE”).<sup>1</sup> The complaint alleges that Christina School District (“District”) violated the Individuals with Disabilities Education Act (“IDEA”) and corresponding state and federal regulations with respect to Student. The complaint has been investigated as required by federal regulations at 34 C.F.R. §§ 300.151 to 300.153, and according to the DOE’s regulations at 14 DE Admin Code §§ 923.51.0 to 53.0. The investigation included a review of Student’s educational records and independent evaluations. Interviews with District staff members, Parent, and Psychologist were also conducted.

**COMPLAINT ALLEGATION**

The complaint alleges that District, through Employee’s actions, violated Student’s right to confidentiality.<sup>2</sup> Specifically, the complaint alleges that Employee improperly accessed Student’s educational records and released those records to a third party without Parent’s consent.

**FINDINGS OF FACT**

1. The Department’s investigation is limited to alleged violations that occurred not more than one year prior to the date the complaint was received by the Department. *See* 34 C.F.R. § 300.153(c). In this case, the complaint was received by the Department on October 2, 2013. As a result, this decision addresses the alleged violations occurring between October 2, 2012 and October 2, 2013.<sup>3</sup>

---

<sup>1</sup> The Final Report identifies some people and places generically, to protect personally identifiable information about the student from unauthorized disclosure. An index of names is attached for the benefit of the individuals and agencies involved in the investigation. The index must be removed before the Final Report is released as a public record.

<sup>2</sup> Special Education Administrative Complaints must allege “that a *public agency* has violated a requirement of Part B of the Act or of the [ ] regulations.” *See* 14 DE Admin Code § 923.53.2.1 (emphasis added). As such, although the complaint, as filed, alleges violation by a District employee, it has been accepted and investigated as a complaint against the District.

<sup>3</sup> The complaint sets forth additional allegations related to the Health Insurance Portability and Accountability Act of 1996 (HIPPA). Such allegations are both outside the scope of the Department’s substantive investigative authority and are alleged to have occurred prior to October 2, 2012. This Department’s investigation is therefore limited to the allegations related to the improper disclosure of Student’s special education records.

2. Student is currently 14 years of age. Student is identified as a student with a disability eligible for special education and related services. Student's identification is based on Student's diagnosis of Emotional Disturbance.
3. On the dates relevant to the complaint, Employee was Student's step-father by way of Employee's marriage to Parent in January 2011.
4. On the dates relevant to the complaint, Employee was employed by District in District's administrative offices.
5. As District's Unit Count Administrator, Employee has access to District's electronic special education records.
6. District has a written policy in place "set[ting] forth the conditions governing the protection of the privacy of parents and students as it relates to the collection, maintenance, and disclosure of education records of students attending or who have attended District Schools." Among other things, the written policy addresses access to such records, the confidentiality of such records, and the method by which such records may be amended. The written policy also specifically addresses educational records for students with disabilities.
7. District has no record that Employee received District's written policy regarding the confidentiality of student records.
8. District has no record that Employee received training regarding the confidentiality of student records, including special education records.
9. Employee is a signatory to Student's September 28, 2010 Evaluation Summary Report.
10. Employee attended Student's March 8, 2011, and February 27, 2012 IEP meetings, respectively. Employee is listed as an IEP Team member on the invitations to those meetings and in the resulting IEP's.
11. On or about January 24, 2013, Student's school ("School") sent separate invitations to Parent and Employee for Student's February 26, 2013 IEP meeting. Both Parent and Employee signed the same form indicating that they would be able to attend the meeting at the scheduled date, time, and place.
12. On the morning of February 26, 2013, Parent informed School's Vice Principal via email that Employee could not attend the IEP meeting. Parent suggested a mid-morning IEP meeting on another date so that Employee could attend. Parent also apologized for the late cancellation, indicating that Employee had informed Parent late the night before that Employee would be unable to attend the meeting. A School staff member replied via email to both Parent and Employee, stating that the meeting would be rescheduled for March 6, 2013 at 11:15 a.m.

13. On February 27, 2013, Parent informed Employee via email that Employee was to be removed from all correspondence regarding Student. Hours later, Parent informed Vice Principal via email that Parent wished for Employee to be removed from all emails regarding Student. Parent stated that he/she was going through what Parent characterized as a “nasty divorce” with Employee.
14. On March 6, 2013, Student’s IEP meeting was conducted. Parent participated as an IEP team member and signed the Invitation to Meeting. Employee did not attend, nor did employee sign the Invitation to Meeting.
15. On March 25, 2013, Parent sent an email to a School staff member again referencing the divorce and requesting that Employee be removed from any correspondence regarding Student. The staff member forwarded the email internally, as requested by Parent, and one staff member indicated that Employee “ha[d] been off [correspondence regarding Student] for a while.”
16. On April 15, 2013, Employee wrote an email to a school staff member, cc’ing Parent, indicating that Employee and Parent were attempting to take Student to a doctor. The purpose of the email was to inform School of the reason for Student’s absence from School that day. Vice Principal immediately contacted Parent via telephone and Parent confirmed that Parent and Employee were attempting to take Student to a doctor that day.
17. In a May 14, 2013 email correspondence with Vice Principal, Parent indicated that Student was under the care of a doctor (“Psychologist”).
18. At some point between March and July 2013, Employee accessed student’s IEP records and provided the records to Psychologist.
19. Parent did not provide written consent for Student’s educational records to be provided to Psychologist.
20. Employee filed for divorce from Parent on or about June 10, 2013.
21. On June 18, 2013, Parent wrote an email to Vice Principal, stating that Student’s IEP records and personal information regarding Parent was “leaked” to a Psychologist. Parent stated that Employee delivered them by hand to the Psychologist in Newark. Parent further stated that Parent did not authorize the release of such documents.
22. In July 2013, Parent and Employee’s divorce became final.

## CONCLUSIONS

This investigation is limited to determining whether there was a violation of Part B of the IDEA or state regulations concerning the provision of special education and related services.

### *District Policies and Procedures Regarding Confidentiality of Personally Identifiable Information and Student Educational Records*

All Local Educational Agencies (“LEA’s”) are required to “take reasonable steps to ensure the confidentiality of [the] personally identifiable information” of its students. 14 DE Admin Code § 923.23.0. *See also* 14 DE Admin Code § 927.23.1 (stating that LEA’s “shall protect the confidentiality of personally identifiable information at collection, storage, and destruction stages”). “To ensure the protection of the confidentiality of any personally identifiable data, information, and records collected or maintained by public agencies pursuant to Part B of the [Individuals with Disabilities Education] Act, the DOE, each LEA and any other public agency shall comply with” Delaware’s regulations related to the Family Educational Rights and Privacy Act (FERPA), and 14 DE Admin Code §§ 927.11.0 through 927.26.0 related to the confidentiality of records for students with disabilities.

Delaware regulations related to FERPA can be found at 14 DE Admin Code §§ 251 and 252. Among other things, the regulations provide that “[e]ach school district, charter school and private school shall develop, adopt, and maintain a written policy regarding the educational records of its students.” 14 DE Admin Code § 251.2.1. The policy “shall address access to such records, the confidentiality of such records, and the method by which the records may be amended.” *Id.* Here, District has a written policy in place regarding the educational records of its students. Consistent with 14 DE Admin Code § 251, District’s written policy addresses access, confidentiality, and the method by which student educational records may be amended.

In addition to the requirement that LEA’s maintain a written policy, Delaware regulations also provide that “[a]ll persons collecting or using personally identifiable information shall receive training or instruction regarding 11.0 through 26.0, 14 DE Admin. Code 251 and 252, and the federal regulations implementing FERPA at 34 CFR part 99.” 14 DE Admin Code § 927.23.3. Although District has a written policy in place regarding the educational records of its students, District has failed to provide evidence that Employee received training or instruction regarding 11.0 through 26.0; 14 DE Admin. Code 251 and 252; and the federal regulations implementing FERPA at 34 CFR part 99. Importantly, the District has provided no evidence that Employee received or reviewed District’s written policy regarding the confidentiality of student records. **Therefore, I have identified a violation of Part B of the IDEA and corresponding state regulations for District’s failure to provide training or instruction regarding the confidentiality of student records.**

Also related to the confidentiality of personally identifiable information and student records, 14 DE Admin Code § 927.23.4 provides that each LEA “shall maintain, for public inspection, a current listing of the names and positions of those employees within the agency who may have access to personally identifiable information.” Here, District has failed to provide a current listing of the names and positions of employees within the District who may have access to personally identifiable information. **Therefore, I have identified a violation of Part**

**B of the IDEA and corresponding state regulations regarding the requirement that LEA's maintain, for public inspection, a current listing of the names and positions of employees who may have access to personally identifiable information.**

*Employee's Actions*

14 DE Admin Code § 927.22.1 provides that “[p]arental consent shall be obtained before personally identifiable information is disclosed to parties (other than officials of participating agencies in accordance with 22.2, 22.3 and 22.4) unless the information is contained in education records, and the disclosure is authorized without parental consent under federal regulations implementing FERPA at 34 CFR part 99.” 14 DE Admin Code § 922.3.0 defines “consent” as follows: “‘Consent’ means that the parent has been fully informed of all information relevant to the activity for which consent is sought, . . . the parent understands and agrees in writing to the carrying out of the activity for which his or her consent is sought; the consent describes that activity and lists the records (if any) that will be released and to whom . . .”

Here, there is no dispute that Employee accessed Student’s educational records electronically. There is, however, a dispute regarding the circumstances under which such records were provided to Psychologist. Employee maintains that Employee and Parent jointly provided Student’s educational records to Psychologist. Psychologist confirms that Employee and Parent were both present when Psychologist was provided Student’s educational records. However, Parent maintains that he/she did not request Student’s educational records, did not authorize the release of such records to Psychologist, and was not present when such records were provided to Psychologist. Due to the discrepancy regarding whether Employee provided the records to Psychologist himself/herself, or whether both Employee and Parent jointly provided the records to Psychologist, I cannot determine whether written consent would have been required. **Therefore, I cannot identify a violation of Part B of the IDEA or corresponding state regulations inasmuch as Student’s educational records were provided to Psychologist.**

**CORRECTIVE ACTIONS**

To address the regulatory violations noted in this decision:

- A) By **February 1, 2014**, District shall issue a memo to all District employees regarding the confidentiality of personally identifiable information student educational records and provide a copy thereof to the Director of Exceptional Children Resources for the Department of Education.
- B) By **February 1, 2014**, District shall develop a current listing of the names and positions of those employees within the District who may have access to personally identifiable information and provide a copy thereof to the Director of Exceptional Children Resources for the Department of Education. District is reminded of its ongoing obligation, pursuant to 14 DE Admin Code § 927.23.4, to maintain such list for public inspection.
- C) By **February 1, 2014**, District shall provide a detailed corrective action plan to the Director of Exceptional Children Resources for the Department of Education. The

plan shall set forth District's plan to ensure that ***all*** District employees who may have access to personally identifiable information are provided training or instruction regarding 14 DE Admin Code § 927.11.0 through 26.0; 14 DE Admin. Code 251 and 252; and the federal regulations implementing FERPA at 34 CFR part 99. For those individuals who have received training or instruction, the plan shall address how those individuals will be reminded of District's policies regarding the confidentiality of personally identifiable information and student records on an annual basis.

By: /s/ Michelle E. Whalen  
Michelle E. Whalen, Esq.  
Assigned Investigator

Date: November 27, 2013