



# Wyoming Department of Education

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## WYOMING DEPARTMENT OF EDUCATION SPECIAL PROGRAMS DIVISION SPECIAL EDUCATION COMPLAINT INVESTIGATION

**Complainant:**

Case #: C-0183-11

**Respondent:**

### COMPLAINT DECISION AND ORDER FOR CORRECTIVE ACTION

**Date of Decision:** February 17, 2011

On December 21, 2011 the Wyoming Department of Education (WDE) received a complaint and supporting documentation filed by \_\_\_\_\_, (hereinafter "Complainant") alleging violations of special education law with respect to \_\_\_\_\_ (hereinafter "Student"), by Respondent \_\_\_\_\_ (hereinafter "District").

Pursuant to 34 C.F.R. §§300.151 through 300.153 of the Federal Regulations implementing the Individuals With Disabilities Education Act (IDEA), WDE conducted an investigation into the allegations raised in the complaint. Consistent with the IDEA, Federal Regulations, and the Wyoming Department of Education Rules, Chapter 7, WDE issues the following Findings of Fact, Conclusions, Decision, and Order for Corrective Action.

#### **Complaint Issue:**

Whether the District violated its duty to maintain the confidentiality of personally identifiable information regarding the Student in violation of 34 C.F.R. §300.610.

#### **Investigatory Process:**

- Review of records consisting of the following:
  - Original letter of complaint and supporting documents.
  - District's response to the allegation, including the District's confidentiality policies.
  - Electronic correspondence.

- Follow up inquiries with the District regarding special education policies.
- Follow up inquiries with the Complainant.
- The District and Complainant were given the opportunity to submit additional information to WDE for consideration throughout the investigation of this complaint.

**Applicable Federal Regulations or State Rules:**

34 C.F.R. §§300.610 through 300.627 Confidentiality of Information

Wyoming Department of Education Rules, Chapter 7

**Relevant Time Period:**

Pursuant to 34 C.F.R. §300.153(c), WDE has the authority to investigate allegations of violations that occurred not more than one year from the date the complaint was received. In light of this limitation, the investigation and any findings of noncompliance will be limited to the period commencing December 22, 2010 to December 21, 2011. However, the allegation in this matter is a single event, and the investigation is limited to the discrete period of time surrounding the event.

**Findings of Fact:**

1. The Student is a learner with a disability in 12<sup>th</sup> grade within the District.
2. On December 14, 2011, a District staff member sent a broadcast email to all other high school staff regarding several special education students, including the Student who is the subject of this complaint. An attachment to the email was a document titled "College Ready and Special Education." The students were identified as "IEP students," and their names were included in the transmission.
3. The broadcast email was disseminated to 116 addresses. According to the District, approximately 70 of the addresses were high school teachers. The other addresses included support staff, custodial staff, food service staff, and outside contractors.
4. The District acknowledged in its response to this complaint that a breach of the Student's confidentiality had occurred.
5. The District implemented corrective measures, including reprimand of the responsible staff person.
6. In the complaint filed with WDE, the Complainant expressed the belief that a proposed resolution or solution to the disclosure issue was for the staff member and the District to apologize to all affected students.
7. The District reports that it has not taken any steps to notify those students or their parents, finding "no statutory duty to do so under the IDEA or FERPA." The District expressed its belief that informing the other parents would not mitigate any damage that may have been done.

8. The District indicated: "It is the position of [District] that this incident was the result of one employee's carelessness, not the result of any policy or procedure approved or tolerated by [District]."
9. As part of the investigation, the District submitted copies of its policies and procedures relating to the confidentiality of student records and special education records.
10. The District's submission included the following policies:
  - Student Health Services and Requirements Regulations, adopted on May 13, 2004;
  - Procedures and Practices of the School District Governing the Maintenance, Transfer and Disclosure of Student Educational Records, adopted March 18, 2004; and
  - Cumulative Student Records, adopted January 22, 2004.
11. The policies submitted by the District are silent with respect to the confidentiality of special education records or the personally identifiable information of special education students.
12. The District was asked to produce a policy specifically addressing the confidentiality of special education records. In response, the District provided copies of the three policies mentioned in paragraph 10 above. After additional inquiry, the District indicated a policy and procedure had been drafted, but the School Board never formally acted on it or adopted it.
13. WDE conducted a thorough review of District policies located on its website, but was unable to locate any policy or procedure addressing the confidentiality of special education records.

**Conclusions:**

1. The Student is identified as a learner with a disability under the Individuals with Disabilities Education Act (IDEA).
2. As an eligible child, the Student is entitled to all of the protections afforded by the Part B of the IDEA, its implementing regulations, and Wyoming Department of Education's Chapter 7 Rules.
3. The Federal Regulations implementing the IDEA require that all states must have policies and procedures in effect to ensure that public agencies comply with 34 C.F.R. §§300.610 through 300.626. 34 C.F.R. §300.123.
4. "The SEA (WDE) must have in effect policies and procedures, including sanctions that the State uses, to ensure that its policies and procedures consistent with §§300.611 through 300.625 are followed and that the requirements of the [IDEA] and the regulations in this part are met." 34 C.F.R. §300.626.
5. WDE has adopted a policy regarding confidentiality consistent with the provisions of 34 C.F.R. §§300.610 through 300.625. Adopted on July 1, 2010, the policy includes the following information regarding enforcement:

WDE shall enforce this policy and procedures consistent with the IDEA. School districts or public agencies found to be out of compliance by WDE with any of the provision of this policy shall:

1. Be given the opportunity to come into immediate compliance without further sanctions;
  2. Demonstrate appropriate policies, procedures, or practices to ensure the future compliance with the policy;
  3. Be required to complete a Corrective Action Plan by WDE to ensure that its policies, procedures, or practices are consistent with this policy, and applicable federal and state laws; or
  4. Any other sanctions determined necessary and appropriate by WDE.
6. Local school districts, in providing for the education of children with disabilities within its jurisdiction, must have in effect policies, procedures, and programs that are consistent with the State policies and procedures. See 34 C.F.R. §300.201.
  7. The District was unable to produce a policy or procedure adopted by its governing board specifically addressing the requirements of 34 C.F.R. §§300.610 through 300.626.
  8. It is reasonable to conclude based on the information in the record and the subsequent follow up inquiries that the District has not formally adopted a policy as required by the IDEA to protect the confidentiality of personally identifiable special education records as required by the IDEA and WDE policy.
  9. Each participating agency (any agency that collects, maintains, or uses personally identifiable information under Part B of the IDEA) must protect the confidentiality of personally identifiable information at the collection, storage, disclosure, and destruction stages. 34 C.F.R. §300.623(a).
  10. FERPA defines *personally identifiable information* as including, but not limited to, the student's name; the name of the student's parent or other family members; a personal identifier, such as the student's social security number, student number, or biometric record; other indirect identifiers, such as the student's date of birth, place of birth, and mother's maiden name; other information that, alone or in combination, is linked or linkable to a specific student that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty; or information requested by a person who the educational agency or institution reasonable believes knows the identify of the student to whom the education record relates.
  11. Parental consent must be obtained before disclosing personally identifiable information regarding a student. 34 C.F.R. §300.622 and 34 C.F.R. §99.30.
  12. Exceptions to the parental consent requirement are very narrow. An educational agency may disclose personally identifiable information from an education record of a student without the consent of the parent if "the disclosure is to other school officials, including teachers, within the

agency whom the agency has determined to have legitimate educational interests." 34 C.F.R. §99.31.

13. The District concedes that the actions of the staff member violated the Student's right to confidentiality as guaranteed by the IDEA and FERPA based on the fact that personally identifiable information regarding the Student was released without parent consent, and many of the individuals to whom the information was released, for example custodians or food service staff, would have no "legitimate educational interest" in the information.
14. It is reasonable to conclude that the District, by its own acknowledgement, breached the confidentiality of the Student by releasing personally identifiable information from the Student's education records in the broadcast email sent to 116 school employees.
15. Regarding the notification of other parents of similarly situated students, the United States Department of Education opined in the preamble to the Federal Regulations implementing FERPA: "The Department does not have the authority under FERPA to require that agencies or institutions issue a direct notice to a parent or student upon an unauthorized disclosure of education records. FERPA only requires that the agency or institution record the disclosure so that a parent or student will become aware of the disclosure during an inspection of the student's education record." 73 Federal Register 74843 (2008).
14. Therefore, WDE is also without authority to compel the District to notify the parents of similarly situated students of the unauthorized disclosure.

**Decision:**

Whether the District violated its duty to maintain the confidentiality of personally identifiable information regarding the Student in violation of 34 C.F.R. §300.610.

**WDE determines that the District violated its duty to maintain the Student's confidentiality consistent with IDEA and FERPA.**

**Corrective Action Plan:**

1. The District shall provide at least two (2) hours of inservice training to all special education staff and also any administrative or support staff responsible for the safeguarding of confidential special education records. The training shall focus on the District's duty to protect all special education students' confidential personally identifiable information and special education records, regardless of the medium in which the information is stored. The inservice training must be completed by April 1, 2012.
2. The District shall provide WDE with the following documentation:
  - a. The date, time, location, and name of presenter(s) within fifteen (15) days of the date of this decision; and

- b. Copies of any materials or handouts used, the agenda, and any sign-in sheets documenting the attendance of special education and relevant administrative or support staff within ten (10) days of completion of the mandatory inservice training.
3. The District must submit evidence that it has formally adopted a policy, which may include a procedure, to ensure the protection of confidential special education student information and records meeting all of the requirements of IDEA and FERPA, as well as WDE's policy. Evidence of formal adoption of a compliant policy, along with a copy of the policy or procedure adopted, shall be submitted to WDE no later than May 1, 2012.
4. All required submissions must be sent to WDE to the attention of Diana Currah, with a copy to the Complainant.

Please direct questions regarding this complaint investigation to the Wyoming Department of Education, Special Programs Division at 307-857-9285 or 800-228-6194.

Sincerely,



Stephanie Weaver  
Deputy Director of Special Education  
Special Programs Division

cc: Superintendent  
Board Chair  
Cindy Hill, Superintendent of Public Instruction  
John Masters, WDE Legal Counsel  
Christine Steele, WDE Instructional Leader, Operations