

Decision of the Colorado Department of Education  
Under the Individuals with Disabilities Education Act (IDEA)

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**State-Level Complaint 2024:555**  
**Roaring Fork School District**

**DECISION**

**INTRODUCTION**

On May 2, 2024, the parent (“Parent”) of a student (“Student”) identified as a child with a disability under the Individuals with Disabilities Education Act (“IDEA”)<sup>1</sup> filed a state-level complaint (“Complaint”) against Roaring Fork School District (“District”). The Colorado Department of Education (“CDE”) determined that the Complaint identified three allegations subject to the jurisdiction of the state-level complaint process under the IDEA and its implementing regulations at 34 C.F.R. §§ 300.151 through 300.153. Therefore, the CDE has jurisdiction to resolve the Complaint.

On May 23, 2024, the District filed a due process complaint concerning the same issues raised in the Complaint. Pursuant to 34 C.F.R. § 300.152(c)(1), the Complaint was placed in abeyance pending the resolution of the due process complaint. On July 8, 2024, the CDE received notice that the Office of Administrative Courts, overseeing the due process proceedings, would not be taking jurisdiction over the issue raised by Allegation No. 3 in the Complaint.<sup>2</sup> Accordingly, the state complaint investigation as to Allegation No. 3 was reinstated. While the Complaint’s other two allegations are held in abeyance, this Decision will address the remaining allegation.

**RELEVANT TIME PERIOD**

The CDE has the authority to investigate alleged noncompliance that occurred no earlier than one year before the date the Complaint was filed. 34 C.F.R. § 300.153(c). Accordingly, findings of noncompliance shall be limited to events occurring after May 2, 2023. Information prior to May 2, 2023 may be considered to fully investigate all allegations.

**SUMMARY OF COMPLAINT ALLEGATIONS**

Whether District denied Student a Free Appropriate Public Education (“FAPE”) because District:

3. Failed to protect the confidentiality of Student’s personally identifiable information (“PII”) and disclosed Student’s PII to other parties without Parent’s consent—

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<sup>1</sup> The IDEA is codified at 20 U.S.C. § 1400, et seq. The corresponding IDEA regulations are found at 34 C.F.R. § 300.1, et seq. The Exceptional Children’s Education Act (“ECEA”) governs IDEA implementation in Colorado.

<sup>2</sup> Parent and District received formal notice of the Administrative Law Judge’s determination that the issue presented by Allegation No. 3 was outside the scope of the due process proceedings on July 17, 2024. See *CDE Exhibit 1*.

specifically to District’s Chief Academic Officer—during the 2023-2024 academic year, in violation of 34 C.F.R. §§ 300.622-623.

### **FINDINGS OF FACT**

After thorough and careful analysis of the entire Record,<sup>3</sup> the CDE makes the following findings of fact (“FF”):

#### **A. Background**

1. Student is 18 years old and, during the 2023-2024 school year, attended a high school (“School”) in District. *Complaint*, p. 2; *Response*, p. 1.
2. Student qualifies for special education and related services under the disability categories of Autism Spectrum Disorder (“ASD”) and a specific learning disability (“SLD”) in written expression. *Id.*
3. Student is twice exceptional and excels in visual-spatial activities, especially chess and Legos. *Interview with Parent*. Student struggles with understanding social norms and, as a result, exhibits behavior that appears defiant. *Id.*
4. Parent is concerned that Student’s PII was disclosed to District’s Chief Academic Officer (“CAO”) without her consent. *Complaint*, p. 23; *Reply*, pp. 7-8, 10. District asserts it appropriately disclosed Student’s education records to the CAO—a school official with a legitimate educational interest in Student—and, therefore, Parent’s consent was not required. *Response*, p. 5.

#### **B. District Policies and Procedures**

5. District has written policies governing the protection of confidential student information contained in student education records, parents’ right to inspect and review student education records, and the circumstances in which District staff may disclose students’ PII. *Exhibit A*, pp. 27-35. Generally, “no person or agency may access student education records without prior written consent from a student’s parent/guardian.” *Exhibit 19*, p. 1. However, District “may disclose student education records or [PII] contained therein without written consent of the parent” if “[t]he disclosure is to a school official having a legitimate educational interest in the student education record and the [PII] therein.” *Id.*; *Response*, p. 4.
6. District policy defines a “school official” as a person “working in an official capacity to provide instruction or supporting services to students,” and are typically employees such as District administrators, supervisors, teachers or support staff members. *Exhibit 19*, p. 1; *Response*, p. 5.

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<sup>3</sup> The appendix, attached and incorporated by reference, details the entire Record.

A school official has a “legitimate educational interest” if disclosure to the school official is: 1) necessary for that official to perform appropriate tasks that are specified in his or her position description; 2) used within the context of official district business and not for purposes extraneous to the official’s area of responsibility; 3) relevant to the accomplishment of some task or to a determination about the student; and 4) consistent with the purposes for which the data [is] maintained.

*Exhibit 19, p. 1.*

7. District’s data privacy policy also describes how and when student data may be shared among school officials. *Id.* at p. 7. Pursuant to this policy, “school officials are limited in their access to student data” and “may only view student information necessary to complete their work duties.” *Id.*
8. CAO’s position description states CAO will “ensure coordinated planning and consistent implementation of the District’s academic program” and “collaborate with school administrators and teachers to identify needs and resources.” *Id.* at p. 1. Therefore, CAO “is ultimately responsible for the academic success of every student in the District, including those students in special education.” *Response*, p. 3. Specifically, one of CAO’s primary duties is to “supervise special education,” and CAO is the direct supervisor of District’s Director of Special Education (“Director”) and all building principals. *Exhibit A, p. 1; Response, p. 3.*
9. In the role as supervisor of the academic programs of the District, including special education, CAO “has direct access to all District students’ educational records, including students who are eligible for special education.” *Response*, p. 2. “At times, in order to carry out her responsibilities, [CAO] must become actively and directly involved in an individual student’s education.” *Id.* at p. 3.

### **C. Disclosure of Student’s PII to CAO**

10. In June 2023, School was added to CAO’s scope of responsibility, where she directly supervised Director and the School principal. *Response*, p. 3. In addition to having direct access to all District students’ education records, including Student’s, “[b]ecause there had been claims on behalf of the Student beginning in 2022, [CAO] was copied on emails and provided information regularly concerning the Student’s education and the Parent’s communications with the District.” *Response*, p. 3; *Interview with CAO.*
11. District did not seek consent from Parent prior to providing CAO access to Student’s education records. *Complaint*, p. 23; *Response*, p. 5. Parent asserts that CAO “holds no legitimate educational interest in [Student’s] special education instruction, related services, or involvement with his IEP,” and is therefore concerned that Student’s PII was disclosed to CAO without her consent. *Reply*, p. 10. District contends that CAO is a school official with a legitimate educational interest in Student under District policy; specifically, CAO’s supervisory

role over District's special education program "required [her] to have detailed knowledge of the Student's education plan and program and the details of services to the Student." *Response*, pp. 2, 5. Therefore, District asserts it was not required to seek or obtain consent from Parent before disclosing Student's PII to CAO. *Id.* at p. 5.

#### **D. CAO's Involvement with Student's Education**

12. During the spring 2023 semester, communication began to break down between Parent and District staff, including between Parent and Director. *Response*, p. 4; *Reply*, pp. 5, 6; *Interviews with Parent and CAO*. "Recognizing that there could be no productive communication between [Director] and the Parent, [CAO] essentially took over what would have been [Director's] role, supporting School staff with establishing functional communication between the school team and the Parent." *Response*, p. 4. To do so, CAO "instituted the writing of weekly updates [to Parent from Student's service providers] about the student to ensure communication to the parent from staff was concise and clear" and "inclusive of all questions or concerns that have surfaced during the course of the week." *Response*, p. 4; *see Reply*, p. 2; *Exhibit 8*, pp. 16-17.
13. On January 30, CAO emailed Parent "to discuss a communication plan aimed at ensuring [Parent] [was] able to communicate [Parent's] and [Student's] needs to school staff and District personnel, while streamlining communication." *Exhibit B*, p. 13; *Exhibit 8*, p. 42. On February 1, CAO and Parent met and agreed to a communication plan, which generally described the expectation that all communication between Parent and District staff would be "respectful and productive." *Exhibit B*, p. 11; *Interview with Parent*. The plan also specified that CAO would be copied on staff's weekly email to Parent and would be the point of contact to "receive and respond to Parent's concerns" or if "frustrations or emotions [were] high." *Exhibit B*, pp. 11-12. Parent asserts designating CAO as the single point of contact impeded her right to parental involvement in Student's education, noting CAO is not "immediately available [and] lacks specialized knowledge, is not an IEP team member, [and] has never attended an IEP meeting." *Reply*, pp. 1-2.
14. After the communication plan was instituted, "CAO and the Parent were able to have conversations about the Student's program and the service delivery that staff members were providing to the Student, and [CAO] was able to address various complaints and questions the Parent raised." *Response*, p. 4; *Exhibit B*, pp. 14-20. CAO continued to remain "actively and closely involved in the Student's education," including "supporting the scheduling of his IEP annual review meeting" and responding to Parent's requests for documents. *Response*, p. 4; *Exhibit B*, pp. 14-20; *Interview with CAO*.

#### **CONCLUSIONS OF LAW**

Based on the Findings of Fact, the CDE enters the following CONCLUSIONS OF LAW:

**Conclusion to Allegation No. 3: District disclosed Student’s PII to a school official with legitimate educational interests in Student and therefore did not need Parent’s consent to do so. District appropriately followed the IDEA’s procedural guidance around disclosure of PII, as required by 34 C.F.R. §§ 300.622-623.**

Parent’s concern is that District disclosed Student’s PII to District’s CAO without her consent.

The IDEA requires school districts to protect the confidentiality of any personally identifiable data, information, and records it collects or maintains. 34 C.F.R. §§ 300.610-627. “PII” refers to information that contains:

- a. The name of the child, the child’s parent, or other family member;
- b. The address of the child;
- c. A personal identifier, such as the child’s social security number or student number; or
- d. A list of personal characteristics or other information that would make it possible to identify the child with a reasonable certainty.

*Id.* § 300.32.

Under 34 C.F.R. § 300.622(a), “[p]arental consent must be obtained before [PII] is disclosed to parties, other than officials of participating agencies in accordance with paragraph (b)(1) of this section, unless the information is contained in education records, and the disclosure is authorized without parental consent under [the Family Education Rights and Privacy Act (“FERPA”).” See also *CDE Parent and Child Rights in Special Education: Procedural Safeguards Notice*, p. 9. 34 C.F.R. § 300.622(a), therefore, incorporates FERPA’s exceptions to the consent requirement.

As relevant here, FERPA permits disclosure of students’ PII without parental consent “to other school officials . . . within the [district] whom the [district] has determined to have legitimate educational interests.” 34 C.F.R. § 99.31(a)(1)(i)(A). Thus, FERPA regulations permit school districts to determine which individuals possess such an interest. *Id.*; *Letter to Anonymous*, 124 LRP 23324 (SPPO 2023) (“It is the [district’s] responsibility to determine who is a school official and what the [district] considers to be a legitimate educational interest.”).

If a school district has a policy of disclosing education records to school officials, the district 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. *Id.* § 99.7(a)(3)(iii); see also *Clark Cnty. Sch. Dist.*, 123 LRP 21929 (SEA NV 06/23/23) (finding school secretary did not have legitimate educational interest in a student’s PII under the district’s narrow “legitimate educational interest” definition). “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.” *Letter to Reisman*, 60 IDELR 293 (OSEP 2012). A school official need not be a member of a student’s IEP team to have a legitimate educational interest in a student’s education records. *Letter to Anonymous*, 107 LRP 38484 (FPCO 2006); see also *In re Student with a Disability*, 123 LRP 13814 (SEA NE 01/04/24).

Here, District policy delineates who is considered a “school official” and what constitutes a “legitimate educational interest.” (FF #s 5-7). CAO is a senior member of District administration and “supervises special education,” including directly supervising Director. (FF # 8). Given CAO’s primary responsibility to supervise special education, CAO qualifies as a school official with a legitimate educational interest in Student under District policy and, therefore, District did not need to obtain Parent’s consent before disclosing Student’s PII to CAO. (FF # 11). That CAO was not a member of Student’s IEP team and did not attend IEP meetings is not dispositive. (FF # 13). Accordingly, the state complaints officer (“SCO”) finds and concludes that District appropriately followed IDEA’s procedural guidance around disclosure of PII, as required by 34 C.F.R. §§ 300.622-623.

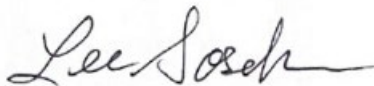
### **REMEDIES**

The CDE concludes that District complied with the requirements of the IDEA as alleged in the Complaint. Accordingly, no remedies are ordered.

### **CONCLUSION**

The Decision of the CDE is final and is not subject to appeal. *CDE State-Level Complaint Procedures*, 13. If either party disagrees with this Decision, the filing of a Due Process Complaint is available as a remedy provided that the aggrieved party has the right to file a Due Process Complaint on the issue with which the party disagrees. *CDE State-Level Complaint Procedures*, 13; *see also* 34 C.F.R. § 300.507(a); 71 Fed. Reg. 156, 46607 (Aug. 14, 2006). This Decision shall become final as dated by the signature of the undersigned SCO.

Dated this 15th day of August, 2024.



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Lee Sosebee, Esq.  
State Complaints Officer

## APPENDIX

### **Complaint, pages 1-28**

- Exhibit 1: Transcript, Grade Reports, Test Scores, etc.
- Exhibit 2: PWNs and Attendance Logs
- Exhibit 3: Parent Proposed IEP and Present Level Data
- Exhibit 4: Snapshot, Progress Logs, New IEP
- Exhibit 5: IEP Meeting Notes
- Exhibit 6: Service Log
- Exhibit 7: Work Samples
- Exhibit 8: Communications

### **Response, pages 1-6**

- Exhibit A: District Policies
- Exhibit B: Correspondence
- Exhibit C: Staff Information
- Exhibit D: Verification of Delivery

### **Reply, pages 1-11**

- Exhibit 9: DAC Report
- Exhibit 10: Disclosure Letter
- Exhibit 11: Emails
- Exhibit 12: Emails
- Exhibit 13: District Policy
- Exhibit 14: Emails
- Exhibit 15: Emails
- Exhibit 16: Emails
- Exhibit 17: Emails
- Exhibit 18: District Policy
- Exhibit 19: District Policy

### **Telephone Interviews**

- CAO: August 1, 2024
- Parent: July 15, 2024

### **CDE Exhibits**

- CDE Exhibit 1 – ALJ Order