

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

**State-Level Complaint 2024:528
Adams 12 Five Star Schools**

DECISION

INTRODUCTION

On March 6, 2024, an attorney (“Complainant”) filed a state-level complaint (“Complaint”) on behalf of the parents (“Parents”) of a student (“Student”) identified as a child with a disability under the Individuals with Disabilities Education Act (“IDEA”)¹ against Adams 12 Five Star Schools (“District”). The State Complaints Officer (“SCO”) determined that the Complaint identified one allegation 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 SCO has jurisdiction to resolve the Complaint.

RELEVANT TIME PERIOD

Pursuant to 34 C.F.R. § 300.153(c), the Colorado Department of Education (the “CDE”) has the authority to investigate alleged violations that occurred not more than one year from the date the original complaint was filed. Accordingly, this investigation will be limited to the period of time from March 6, 2023, to the present for the purpose of determining if a violation of IDEA occurred. Additional information beyond this time period may be considered to fully investigate all allegations. Findings of noncompliance, if any, shall be limited to one year prior to the date of the complaint.

SUMMARY OF COMPLAINT ALLEGATIONS

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

1. Failed to permit Parents to inspect and review educational records relating to Student, in the form of email correspondence, after Parents’ request in January and/or February 2024, in violation of 34 C.F.R. § 300.613.

¹ 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.

FINDINGS OF FACT

After thorough and careful analysis of the entire Record,² the SCO makes the following FINDINGS:

A. Background

1. Student is a 16-year-old whose home school is a District School. *Response*, p. 1. During the 2023-2024 school year, Student has been attending an out-of-state residential treatment facility. *Id.*; *Exhibit A-2-2*, p. 157.
2. Student is eligible for special education and related services under the category of Serious Emotional Disability (“SED”). *Response*, p.1.
3. This dispute arose after Complainant submitted a request for education records on behalf of Parents and Student. *See Complaint*, pp. 2-3. Complainant alleges that a new policy around student records put into effect by District on March 1, 2024, “creates a financial and institutional barrier” to Parents’ right to inspect and review Student’s education records in violation of the Federal Educational Rights and Privacy Act (“FERPA”), 34 C.F.R. § 300.153(b), and the IDEA, 34 C.F.R. § 300.613. *Id.* at pp. 4-6.

B. District Policy and Practice Regarding Student Records

4. District policies outline the content and custody of student education records, as well as parents’ access to student records. *See Exhibit C*, pp. 1-9. “Parents and students, if they are eighteen years of age or older, may have access to [student’s] education records.” *Id.* at p. 1. “Education records” are defined as “paper and/or electronic documents, files, records, and other materials maintained by a school which contain information which personally identifies a student, including special education records.” *Id.*
5. The District’s Executive Director of Student Support Services (“Director”) is the designated “records custodian for all District special education records, regardless of the school which a student attends.” *Id.* at p. 2; *Interview with Director*.
6. The District maintains special education records electronically, utilizing educational software. *Interviews with Director and Attorney for District (“Attorney”)*.
7. Special education student records maintained by District include a student’s Individualized Education Plan (“IEP”), behavioral plans, evaluations, and other IEP-related documents. *Id.* District does not include information extraneous to a student’s IEP-related documents in its special education records. *Interview with Director*.

² The appendix, attached and incorporated by reference, details the entire Record.

8. The District does not maintain email correspondence in any student's special education record. *Interviews with Director and Attorney*.
9. District policy requires that education records "be provided to the requesting party within a reasonable time under the circumstances, in accordance with the timeline prescribed by applicable law." *Exhibit C*, p. 3.

C. Complainant's Request for Education Records and District's Response

10. On January 11, 2024, Complainant requested in writing Student's education records from District pursuant to FERPA. *Complaint*, p. 2; *Response*, p. 3; *Exhibit A-1*, pp. 2-3. The request included all education records for Student from August 2013 to present. *Response*, p. 3; *Exhibit A-1*, pp. 2-3.
11. On February 13, 2024, District responded to Complainant's request for records by sharing a Google folder with Complainant. *Response*, p. 3. "The Google folder contained Student's academic records, including report cards, class schedules, immunizations, attendance, and other records from throughout Student's enrollment in District." *Id.* The Complainant does not dispute this initial production of records. See *Reply*, pp. 2-3.
12. On February 15, 2024, Attorney notified Complainant that the result of District's IT search of staff emails was extensive. *Response*, p. 3. Given the volume, Attorney requested that Complainant limit the scope of the request. *Id.*; see *Exhibit D*, p. 1.
13. On February 19, 2024, Complainant agreed to limit the scope of the staff email search from 2020 to present. *Id.*; *Exhibit A-1*, p. 1.
14. On February 26, 2024, District provided the remaining records via the Google folder, including Student's special education records, 504 records, and staff emails. *Response*, p. 3; *Exhibits A-2-1, A-2-2*.

D. District's Change of Policy Regarding Emails as Education Records

15. On February 26, 2024, Attorney informed Complainant that District would be effectuating a policy change regarding student education records as of March 1, 2024. *Complaint*, p. 2; *Exhibit D*, p. 1.
16. Prior to March 1, 2024, District responded to all records requests by "produc[ing] all requested educational records, including emails related to the subject student if requested." *Response*, p. 3. If emails were part of a records request, District's legal department was involved due to the potential need for redacting information. *Id.*; *Interviews with Director and Attorney*. District's legal and IT departments would then work together to review and produce requested emails. *Interviews with Director and Attorney*.

17. On and after March 1, 2024, District enacted a new policy that “staff emails are not automatically subject to FERPA requests and can be obtained instead through the Colorado Open Records Act (“CORA”) processes.” *Response*, p. 3; see *Complaint*, p. 3.; *Interviews with Director and Attorney*.
18. District changed its policy given the time- and volume-intensive nature of processing extensive requests for emails and based upon its understanding of the requirements of FERPA and the IDEA. *Interview with Attorney*; see also *Exhibit D*, p. 1.
19. Complainant requested Student’s education records on January 11, 2024, prior to the date District’s new policy regarding staff emails took effect. *Response*, p. 3; *Exhibit A-1*, p. 2. All of Student’s education records requested by Complainant on January 11, 2024, were provided by District by February 26, 2024, including staff emails. *Response*, p. 4; see *Reply*, pp. 2-3. Complainant does not dispute that Parents received all of the relevant records; instead, Complainant addresses whether the change to the policy itself is violative of FERPA and the IDEA. See *Complaint*, pp. 3-6; *Reply*, pp. 1-9.
20. Specifically, Complainant is concerned that the policy prevents Parents from seeking further records of Student and has a “chilling effect” on other parents’ right to access students’ records. *Reply*, pp. 2-3. Complainant also asserts that District maintains emails as evidenced by its ability to provide them in the past and produce them in the future under its suggested CORA processes. *Id.* at p. 4. Finally, Complainant is concerned that case law in this area is outdated and inapplicable in today’s “digital world.” *Id.* at pp. 4-7.

CONCLUSIONS OF LAW

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

Conclusion to Allegation No. 1: The District provided Parents access to all of Student’s educational records following Parents’ request on or about January 11, 2024, consistent with 34 C.F.R. § 300.613. No violation of the IDEA occurred.

A. Parents’ Right to Inspect and Review Records

One of the procedural safeguards afforded to parents under the IDEA is the right to inspect and review their child’s education records. 34 C.F.R. § 300.613(a). Accordingly, a school district “must permit parents to inspect and review any education records relating to their children that are collected, maintained, or used by the agency.” *Id.* A district must comply with a request from a parent to review his or her child’s education records “without unnecessary delay,” and in no case more than 45 days after the request. *Id.*

In the Complaint, Complainant suggested District failed to provide Parents access to all of Student’s education records, in the form of email correspondence, as requested.

Complainant does not dispute District's response that it provided all requested records to Complainant by February 26, 2024 (FF # 19). For this reason, the SCO finds and concludes that District provided Parents with access to Student's education records, consistent with 34 C.F.R. § 300.613. There is no IDEA violation.

Complainant is also concerned, however, that District's new policy regarding staff emails prevents Parents from seeking further records and "creates a financial and institutional barrier" to other parents' right to inspect and review student education records in violation of the IDEA and FERPA. (FF #s 3, 19-20).

Pursuant to its general supervisory authority, CDE must also consider and ensure the appropriate future provision of services for all IDEA-eligible students in the district. 34 C.F.R. § 300.151(b)(2). Indeed, the U.S. Department of Education has emphasized that the state complaint procedures are "critical" to the State Educational Agency's ("SEA") "exercise of its general supervision responsibilities" and serve as a "powerful tool to identify and correct noncompliance with Part B." *Assistance to States for the Education of Children with Disabilities and Preschool Grants for Children with Disabilities*, 71 Fed. Reg. 46601 (Aug. 14, 2006). Given Complainant's concern with District's revised policy affecting the future provision of services for Student and other students with disabilities in the District, the SCO now turns to whether District's policy itself violates its obligations under the IDEA.

B. Emails as Education Records

The IDEA borrows the definition of "education records" from FERPA. 34 C.F.R. § 300.611(b). Under FERPA, "education records" are "those records, files, documents, and other materials which: (i) contain information directly related to a student; and (ii) are maintained by an educational agency or institution" *Id.* § 99.3. Neither the IDEA nor FERPA indicate whether email correspondence regarding a student constitutes an education record. However, the U.S. Supreme Court has held that "[t]he word 'maintain' suggests FERPA records will be kept in a filing cabinet in a records room at the school or on a permanent secure database." *Owasso Indep. Sch. Dist. No. 1-001 v. Falvo*, 534 U.S. 426, 432-33 (2002). Lower courts that have considered the issue have found that ordinary emails are not education records. See *Burnett v. San Mateo-Foster City Sch. Dist.*, 739 F. App'x 870, 873 (9th Cir. 2018) (holding that only emails that were printed and added to student's physical file or maintained in a secure database constituted education records under FERPA); *S.A. v. Tulare Cnty. Off. of Educ.*, 53 IDELR 143, at *6 (E.D. Cal. Oct. 6, 2009) ("[E]mails that are not in Student's permanent file are not 'maintained'" by the school district for purposes of FERPA). Consistent with this case law, CDE has recently found that emails not maintained by a school district in a student's record are not education records under FERPA or IDEA. See *CDE Decisions 2023:563* (September 2023), *2023:618* (February 2024).

Therefore, emails only constitute an education record under FERPA or the IDEA where the school district takes some action to maintain that record. That is because "[e]mails have a fleeting nature. An email may be sent, received, read, and deleted within

moments.” *E.D. v. Colonial Sch. Dist.*, 69 IDELR 245, at *10 (E.D. Penn. Mar. 31, 2017) (finding emails related to student were “casual discussions, not records maintained by [school district]” as part of its record filing system, and therefore not subject to FERPA). If a district were to actively add an email to a student’s file—either in hard copy or electronically—that email may constitute an education record under FERPA and the IDEA. See *Burnett*, 539 F. App’x at 873; S.A., 53 IDELR 143, at *6.

Here, Complainant asserts that District “maintains” staff emails under FERPA because it was able to produce them in the past and would be able to produce them in the future under CORA processes. (FF # 20). However, a school district’s mere possession of emails identifying students, “whether in individual inboxes or the retrievable electronic database,” does not equate to “maintain[ing] in the same way the [district] maintains a student’s folder in a permanent file.” S.A., 53 IDELR 143, at *6. While Complainant asserts that case law in this area—cited in District’s Response and this Decision—is outdated and fails to account for today’s digital age (FF # 20), the CDE is bound by the weight of current legal authority. See also *CDE Decisions 2023:563* (September 2023), *2023:618* (February 2024).

District does not currently maintain email correspondence in student education records. (FF # 8). Accordingly, the SCO finds and concludes that District’s current policy of providing emails through the CORA processes does not violate its obligations under the IDEA.

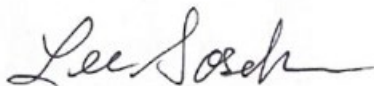
REMEDIES

The SCO concludes that District did not violate the requirements of the IDEA as alleged in the Complaint. Accordingly, no remedies are ordered.

CONCLUSION

The Decision of the SCO 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 (August 14, 2006). This Decision shall become final as dated by the signature of the undersigned SCO.

Dated this 2nd day of May, 2024.



Lee Sosebee
State Complaints Officer

APPENDIX

Complaint, pages 1-6

- Supplemental Clarification Email: dated March 6, 2024

Response, pages 1-6

- Exhibit A-1: Request for Records
- Exhibit A-2-1: District's Response to Records Request – Emails
- Exhibit A-2-2: District's Response to Records Request – Records
- Exhibit B: Separate Records Request
- Exhibit C: District Policies
- Exhibit D: Correspondence re: Complaint
- Exhibit E: District Contact Information
- Exhibit F: Proof of Delivery

Reply, pages 1-9

Telephone Interviews

- Executive Director of Student Support Services: April 9, 2024
- Attorney for District: April 9, 2024