

## **SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 21-95**

### **PROCEDURAL HISTORY**

On November 9, 2021, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Community Complaint from the parent (Complainant) of a student (Student) attending the Tacoma School District (District). The Complainant alleged that the District violated the Individuals with Disabilities Education Act (IDEA) as it connects to the Family Educational Rights and Privacy Act (FERPA) in relation to personally identifiable information about another student (Student 1) contained in special education records.

On November 9, 2021, OSPI acknowledged receipt of this complaint and forwarded a copy of it to the District superintendent on the same day. OSPI asked the District to respond to the allegations made in the complaint.

On November 24, 2021, OSPI received the District's response to the complaint and forwarded it to the Complainant on November 29, 2021. OSPI invited the Complainant to reply.

On December 6, 2021, OSPI received the Complainant's reply. OSPI forwarded that reply to the District the same day.

OSPI considered all of the information provided by the Complainant and the District as part of its investigation.

### **ISSUE**

1. Did the District follow procedures under WAC 392-172A-05185 and 392-172A-05230 to ensure that the Student's personally identifiable information (PII) was kept confidential on May 20, 2021?

### **LEGAL STANDARDS**

Family Educational Rights and Privacy Act of 1974 (FERPA): FERPA generally prohibits the disclosure of "personally identifiable information derived from [students'] education records." *Letter to Walker*, Family Policy Compliance Office (September 2002); *see also* 33 CFR § 99.30(a).

FERPA: Personally Identifiable Information (PII): PII includes, but is not limited to: the student's name; the name of the student's parent or other family members; the address of the student or student's family; 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 reasonably believes knows the identity of the student to whom the education record relates. 34 CFR § 99.3.

FERPA: Disclosure of PII to School Officials with a Legitimate Educational Interest: A school district may disclose PII from an education record of a student without the consent required by 34 CFR § 99.30 if the disclosure is to other school officials, including teachers, within the school district whom the school district has determined to have legitimate educational interests in the relevant PII. 34 CFR § 99.31(a)(1)(i)(A); *see also* WAC 392-172A-05195 (“The [school district or] agency is not required to keep a record of access by parents, and authorized employees with a legitimate educational interest in the records.”)

## **FINDINGS OF FACT**

### **2020–2021 School Year**

1. Both the Student and Student 1 attended a school in the District and are eligible for special education services. The Complainant is the Parent of the Student and is not the parent of Student 1.
2. Based on emails provided to OSPI by both the Complainant and the District during this investigation, it appears that, on both May 20 and 24, 2021, the special education teacher sent the Complainant a draft individualized education program (IEP) for the Student.

On both occasions, the Student’s draft May 2021 IEP included two references to another student (Student 1): “[Student 1] will not participate with nondisabled peers when receiving special education services”; and, “[Student 1] will not participate with nondisabled students when receiving special education pullout services.”

3. In its response, the District stated the disclosure of personally identifiable information on Student 1 to the Complainant was “inadvertent,” and that said disclosure resulted from the special education teacher editing the Student’s draft May 2021 IEP.

The District further stated: the special education teacher corrected the Student’s IEP once she was notified of its inclusion of personally identifiable information on Student 1.

4. The District’s response included, in part, relevant emails and the entirety of the Student’s draft May 2021 IEP. A review of this documentation shows there do not appear to have been additional disclosures of Student 1’s personally identifiable information to Complainant—beyond the incidences on May 20 and 24, 2021.
5. In its response, the District acknowledged the May 20, 2021 Family Educational Rights and Privacy Act (FERPA) violation, and suggested it provide either written guidance or training “to special education staff at the Student’s school regarding protecting the confidentiality of personally identifiable information in accordance with WAC 392-172A-05185 and WAC 392-172A-05230.”
6. In her reply, the Complainant requested, in part, that an “audit [of] all IEPs...managed by the special education teacher in the 2020-2021 and 2021-2022 school years [be conducted] to

ensure that the two [FERPA] violations detailed [herein] are the exception [rather than] the norm.”

## CONCLUSIONS

**Issue 1: FERPA** – The Complainant alleged the District did not follow proper procedures for ensuring the confidentiality of Student 1’s personally identifiable information under the Family Educational Rights and Privacy Act (FERPA).

FERPA generally prohibits the disclosure of personally identifiable information derived from students’ education records to individuals who do not have a legitimate educational interest in viewing that information. Personally identifiable information includes, but is not limited to, the student's name.

Here, on May 20 and 24, 2021, the Complainant was provided with a draft IEP for the Student (her child) that included, on two pages, Student 1’s name. Student 1 is another student in the Student’s class. The Complainant is not the parent of Student 1. And the Complainant did not have a legitimate educational interest in viewing Student 1’s name, which is protected as personally identifiable information under FERPA. Therefore, this represents a violation of FERPA. The District acknowledged this violation and proposed written guidance or training as an appropriate corrective action. OSPI agrees and the District will be required to disseminate written guidance to certain staff. The District will also be required to conduct an audit of those IEPs managed by the special education teacher during the 2021–2022 school year—to ensure no other potential FERPA violations occur in the future.

## CORRECTIVE ACTIONS

By or before **January 14, 2022** and **January 26, 2022**, the District will provide documentation to OSPI that it has completed the following corrective actions.

### STUDENT SPECIFIC:

None.

### DISTRICT SPECIFIC:

#### Dissemination of Written Guidance

By **January 21, 2022**, the District will ensure that the following individuals receive written guidance on the importance of protecting the confidentiality of students’ personally identifiable information, in accordance with WAC 392-172A-05185 and WAC 392-172A-05230: special education administrators, the principal, the assistant principal, and special education-certified staff, including educational staff associates (ESAs)<sup>1</sup>, at the school that the Student and Student 1 were enrolled in during the 2020–2021 school year. The guidance will include examples.

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<sup>1</sup> ESAs include school psychologists, physical therapists, occupational therapists, speech language pathologists, school counselors, school nurses, and other service providers.

By **January 14, 2022**, the District will submit a draft of the written guidance to OSPI for review. OSPI will approve the guidance or provide comments by January 19, 2021.

By **January 26, 2022**, the District will submit documentation that all required staff received the guidance. This will include a roster of the required personnel. This roster will allow OSPI to verify that all required staff members received the guidance.

**Audit of IEPs Managed by Special Education Teacher during the 2020–2021 School Year**

The District will conduct an audit of those IEPs managed by the special education teacher in the 2021–2022 school year—to ensure no other potential FERPA violations occur in the future. Specifically, the District will ensure that students’ IEPs only include personally identifiable information for that particular student.

By or before **January 26, 2022**, the District will inform OSPI of the result of its audit, including a summary of whether any students’ IEPs included personally identifiable information on other students. And, if another student’s personally identifiable information is found in an IEP in which it does not belong, the District will provide OSPI with proof the error has been corrected.

The District will submit a completed copy of the Corrective Action Plan (CAP) Matrix documenting the specific actions it has taken to address the violations and will attach any other supporting documents or required information.

Dated this \_\_\_ day of December, 2021

Glenna Gallo, M.S., M.B.A.  
Assistant Superintendent  
Special Education  
PO BOX 47200  
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**THIS WRITTEN DECISION CONCLUDES OSPI’S INVESTIGATION OF THIS COMPLAINT**

IDEA provides mechanisms for resolution of disputes affecting the rights of special education students. This decision may not be appealed. However, Complainants (or adult students) and school districts may raise any matter addressed in this decision that pertains to the identification, evaluation, placement, or provision of FAPE to a student in a due process hearing. Decisions issued in due process hearings may be appealed. Statutes of limitations apply to due process hearings. Parties should consult legal counsel for more information about filing a due process hearing. Complainants (or adult students) and districts may also use the mediation process to resolve disputes. The state regulations addressing mediation and due process hearings are found at WAC 392-172A-05060 through 05075 (mediation) and WAC 392-172A-05080 through 05125 (due process hearings.)