

**COMPLAINT INVESTIGATION
WASHOE COUNTY SCHOOL DISTRICT
(#WA021113)**

Report Issued on 5/31/13

INTRODUCTION

On 02/11/13, the Nevada Superintendent of Public Instruction received a State Complaint (Complaint) dated 02/11/13 from a Parent alleging violations in the special education program of a student with disabilities attending the Washoe County School District (WCSD). An investigation team was appointed to examine the allegations that the WCSD: 1) did not maintain a current listing for public inspection of the names and positions of employees within the WCSD who may have access to personally identifiable information; 2) disclosed personally identifiable information not authorized by law; 3) did not keep a record of parties who obtained access to educational records; 4) did not protect the confidentiality of personally identifiable information and 5) did not provide criteria for determining who constituted a school official and what constituted a legitimate educational interest.

While the above allegations raised an issue under the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. §1232g et seq.; 34 C.F.R. Part 99, the Complaint also included issues with regard to the confidentiality of information requirements under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §1400 et seq.; 34 C.F.R. §300.610 et seq., and the Nevada Administrative Code (NAC), Chapter 388. The Nevada Department of Education (NDE) accepted jurisdiction over the confidentiality of information issues under the IDEA and NAC, Chapter 388. (50 IDELR 167 (OSEP 2008))

Subsequent to the filing of this Complaint, the Parent filed another Complaint which also included an allegation of noncompliance regarding confidentiality of information requirements. Due to the complexity of the issues, the NDE chose not to amend the existing Complaint, but rather to align the investigation and report timelines to enable the investigation of the Complaints at the same time to ensure a comprehensive investigation of the related issues on confidentiality. The Complainant later requested the consideration of additional evidence on the issue of confidentiality in one of the aligned Complaints. The additional evidence was with regard to a pending administrative hearing.

Both the IDEA and the NAC permit an extension of the 60-day timeline to conduct the investigation and issue the written decision if exceptional circumstances exist with respect to a particular complaint. (34 C.F.R. §300.152(b); NAC §388.318(5)(a)) The NDE determined that the foregoing were exceptional circumstances warranting extensions. Therefore, the NDE extended the timelines in this Complaint to align the timeline for the investigation and the issuance of the report with the newly filed Complaint and, thereafter, to await the issuance of the administrative decision.

COMPLAINT ISSUES

The allegations articulated in the Complaint, and further clarified during the investigation, raised the following issues under the jurisdiction of the NDE to investigate during the time period 2/11/12 to 2/11/13:

Issue One: Whether the WCSD complied with 34 C.F.R. §300.623(d) and NAC §388.289(1)(d) to maintain a current listing for public inspection of the names and positions of its

employees within the school district who may have access to personally identifiable information.

Issue Two: Whether the WCSD complied with 34 C.F.R. §300.622 and NAC §388.289(3) when the student's educational records were disclosed to the Legal Counsel and to the Psychiatrist, specifically was the disclosure authorized without parental consent under 34 C.F.R. §300.62.

Issue Three: Whether the WCSD complied with the record of access requirements in 34 C.F.R. §300.614 and NAC §388.287(4) when the Legal Counsel and the Psychiatrist obtained access to the student's education records.

Issue Four: Whether the WCSD complied with 34 C.F.R. §300.623(c) and NAC §388.289(1)(c) to train or instruct all persons collecting or using personally identifiable information regarding the policies and procedures for protecting personally identifiable information.

PERSONS PROVIDING INFORMATION

The investigation team reviewed documents and information received from the following:

- Parents
- Special Education Contractual Legal Counsel (Legal Counsel)
- WCSD Area Administrator, Student Support Services (Area Administrator)
- WCSD General Counsel

DOCUMENTS REVIEWED

The documents reviewed by the investigation team included the following:

1. Parent Complaint
2. Additional Parent input
3. 11/6/12 document transmittal letter from Legal Counsel to Parents
4. 2/5/13 letter from Legal Counsel to Parents
5. 12/17/12 Individualized Educational Program (IEP)
6. 2/25/13 IEP
7. Sign-in logs of people who accessed student's educational records (Access List)
8. 'SE' Records Access 2012-2013 (SE Records Access List)
9. Emails dated 1/15/13-2/6/13
10. 1/29/13 Parental Prior Written Notice (PWN)
11. Parental Consent for Evaluation/Psychiatric Consultation (Consent Form)
12. 1/14/13 Psychiatric Referral
13. FERPA training documents for WCSD staff (Training Document)
14. WCSD Access to Student Educational Records-A Parental Guide (FERPA Parental Guide)

FINDINGS OF FACT (FOF)

1. The student is a ninth grade student eligible for special education as a student with autism. (12/17/12 IEP)

Names and Positions for Public Inspection

2. On 2/3/13, and subsequently on 2/5, 2/6 and 2/7, the Parents requested a copy of the list the WCSD maintained of the names and positions of its employees who may have access to personally identifiable information. (Complaint, Emails)
3. On 2/11/13, the Parents were provided with a list of names of WCSD personnel who could access students' educational records in 2012/2013. (SE Records Access List)
4. The SE Records Access List did not include the names of everyone in the WCSD who might have access to personally identifiable information, such as classroom teachers. In addition, while the listing included zones/areas of responsibility, the list did not include the positions of the employees. (SE Records Access List)
5. The WCSD was provided the opportunity to provide any alternative SE Records Access List maintained for public inspection and no alternative List was provided. (Complaint investigation)

Disclosure Without Parental Consent and Record of Access

6. WCSD has a policy of disclosing education records to individuals who meet the conditions of a "school official" with a legitimate educational interest. (FERPA Parental Guide; Training Document)
7. Legal Counsel was contracted by the WCSD to handle its special education legal matters during the time period of this Complaint. In that capacity, the Legal Counsel was engaged to work on legal matters involving the Complainant that the WCSD would otherwise use employees for, such as meeting with the Parents and attending the student's IEP meetings. (WCSD General Counsel)
8. In the performance of the contracted legal services, the Legal Counsel had access to personally identifiable information regarding the student. The personally identifiable information included information forwarded from various WCSD employees to the Legal Counsel, such as emails and other correspondence between the Parents and various administrators and teachers. The Legal Counsel's access to the student's personally identifiable information also included receipt of information from the Parents and serving as a conduit for documents provided by WCSD employees at the Parents' request. As a participant in the student's IEP meetings, as well as other meetings, the Legal Counsel also received copies of documents handed out at the meetings. The Legal Counsel did not obtain direct access to the student's Confidential Special Education Record at the school. (Legal Counsel, 11/6/12 letter)
9. No parental consent was sought by the WCSD or provided prior to providing the WCSD Legal Counsel access to personally identifiable information contained in the student's education records. (Complaint, Area Administrator)
10. The 12/17/12 IEP committee added a psychiatric referral to the student's IEP for a psychiatric evaluation/consultation. (12/17/12 IEP)

11. The WCSD contracted with a Psychiatrist to provide psychiatric services, including evaluations, as needed to students in the district. The service/function of the conduct of an evaluation of a student is a function also conducted by WCSD employees. (Area Administrator)
12. WCSD requested that the Psychiatrist conduct the psychiatric evaluation of the student. As part of the psychiatric referral, the Psychiatrist needed to review some of the student's records. On 1/15/13, when the Psychiatrist arrived to review the student's records, the WCSD did not have a signed consent for evaluation from the Parents. (Consent Form, 2/4/13 Email)
13. The Case Manager contacted one of the Parents on 1/15/13 to determine if the Parent had signed consent for the evaluation/consultation and could provide it to the district. The Parent faxed back the signed Consent Form on 1/15/13 after a conversation with the Case Manager. The signed Consent Form stated that the psychiatric evaluation would be performed by a "consulting psychiatrist". It also stated that "medical, mental health, developmental, family, social, substance use and legal histories may be assessed." (2/4/13 Email, Consent Form)
14. In the conversation with the Case Manager on 1/15/13, the Parent indicated that before the WCSD proceeded with the "full Consultation", they wanted to talk with the student's regular doctor. The Parent did not revoke the consent for the evaluation/psychiatric consultation. (2/4/13 Email)
15. Following receipt of the signed parental Consent Form, the Case Manager pulled the following records requested by the Psychiatrist from the student's Confidential Special Education Folder for the Psychiatrist to review: 1) the most current IEP; 2) the most current psychologist's report and eligibility statement; 3) reports done by the psychologist; 4) documentation around the student's diagnosis; and 5) the recommendations from a prior mediation agreement. (2/1/13 and 2/4/13 Emails)
16. No parental consent for the disclosure of personally identifiable information was sought by the WCSD or provided prior to providing the Psychiatrist access to the student's Confidential Special Education Folder. (Complaint, Area Administrator)
17. There is no dispute that the Legal Counsel and the Psychiatrist would be subject to the FERPA requirements governing the use and redisclosure of personally identifiable information obtained from education records.

Records Access List

18. The WCSD maintained an Access List on the front of the student's Confidential Special Education Folder, which was stored at the school. The Access List had space for the reviewer's name, the date of the review and the reason for the review. (Access List, Area Administrator)
19. Neither the WCSD Legal Counsel nor the Psychiatrist entered any information on the Record of Access List on the front of the student's Confidential Special Education Folder. A WCSD employee also did not enter the information on their behalf. (Access List)
20. On 1/15/13, the Case Manager informed the Parents in writing that the Psychiatrist had reviewed the student's records as part of the evaluation process and identified the specific documents the Psychiatrist reviewed. (2/1/13 Email)

Training

21. The WCSD had a FERPA Training Manual during the time period of this Complaint that was used by the WCSD General Counsel in the conduct of FERPA trainings. The Training Manual did not include all of the additional IDEA and NAC, Chapter 388, confidentiality of information requirements for students with disabilities. (Training Document)
22. During the time period of this Complaint, the WCSD conducted several trainings and/or provided instruction on the FERPA, including a training at a district-wide administrative meeting with the expectation that principals would distribute the presentation to their staff. (WCSD General Counsel)
23. No documentation was provided that all WCSD personnel collecting or using personally identifiable information had received training or instruction regarding the additional IDEA and NAC, Chapter 388, confidentiality of information requirements for students with disabilities. (Review of documents)

CONCLUSIONS OF LAW AND REASONS

Issue One: Whether the WCSD complied with 34 C.F.R. §300.623(d) and NAC §388.289(1)(d) to maintain a current listing for public inspection of the names and positions of its employees within the school district who may have access to personally identifiable information.

Both the IDEA, 34 C.F.R. §300.623(d), and the NAC §388.289(1)(d), require each public agency to maintain a current listing for public inspection of the names and positions of those employees within the school district who may have access to personally identifiable information.

The Complainant requested a copy of this required listing on several occasions between 2/3/13 and 2/7/13. (FOF #2) While both the NAC and the IDEA only require the maintenance of this listing for public inspection (NAC §388.289(1)(d); 34 C.F.R. §300.623(d)), the WCSD opted to provide the Complainant a copy of the list of individuals who have access to special education records (FOF # 3), and that is certainly within their discretion. In the absence of any alternative documentation by the WCSD, the complaint investigation team determined that the copy provided to the Complainant was the listing maintained by WCSD for public inspection pursuant to the NAC §388.289(1)(d) and the IDEA, 34 C.F.R. §300.623(d). (FOF #5).

The Records Access List maintained by the WCSD for public inspection was neither a complete listing of all employees within the WCSD who may have access to personally identifiable information nor, for the names provided, did it include the positions of the named individuals. (FOF #s 3 – 4)

Therefore, the complaint investigation team concluded that the WCSD did not comply with 34 C.F.R. §300.623(d) and NAC §388.289(1)(d) to maintain a current listing for public inspection of the names and positions of its employees within the school district who may have access to personally identifiable information.

Issue Two: Whether the WCSD complied with 34 C.F.R. §300.622 and NAC §388.289(3) when the student’s educational records were disclosed to the Legal Counsel and to the Psychiatrist, specifically was the disclosure authorized without parental consent under 34 C.F.R. §300.622.

In accordance with the IDEA, 34 C.F.R. §300.622(a) and (b)(1)), parental consent must be obtained before personally identifiable information is disclosed to parties unless the disclosure is authorized without parental consent under 34 C.F.R. Part 99. (See also NAC §388.289(3)) Title 34 C.F.R. Part 99 contains the regulations for the FERPA.

In accordance with the FERPA, 34 C.F.R. §99.31(a)(1)(i)(B), an educational agency or institution may disclose personally identifiable information from an education record of a student without parental consent if the disclosure is to other school officials within the agency or institution whom the agency or institution has determined to have legitimate educational interests. WCSD has a policy of disclosing education records to individuals who meet the conditions of a “school official” with a legitimate educational interest. (FOF #6)

A contractor to whom an agency or institution has outsourced institutional services or functions may also be considered a school official under certain conditions:

1. The outside party performs an institutional service or function for which the agency or institution would otherwise use employees and would have legitimate educational interests in the information disclosed if the service were performed by employees;
2. The contractor is under the direct control of the agency or institution with respect to the use and maintenance of education records;
3. The contractor is subject to the FERPA requirements governing the use and redisclosure of personally identifiable information from education records; and
4. The agency or institution uses reasonable methods to ensure that school officials obtain access to only those education records in which they have legitimate educational interests. (34 C.F.R. §99.31(a)(1))

If the above conditions are met and a contractor qualifies as a school official under 34 C.F.R. §99.31(a)(1), disclosures to the school official are also exempted from the recordation requirements pursuant to 34 C.F.R. §99.32(d)(2).

In this case, the Legal Counsel was a contractor engaged to handle its special education legal matters. In that capacity, the Legal Counsel was engaged to work on legal matters involving the Complainant and the work involved services/functions the WCSD would otherwise provide for itself using employees, such as meeting with the Parents and attending the student’s IEP meetings and other meetings. (FOF #7) The WCSD provided personally identifiable information contained in the student’s education records to the Legal Counsel in the course of his performance of of the outsourced legal services. (FOF #8) No parental consent was sought by the WCSD or provided prior to providing the Legal Counsel access to personally identifiable information. (FOF #9)

The WCSD also contracted with a Psychiatrist to provide psychiatric services as needed to students in the district. The service/function of the conduct of an evaluation of a student is a function also conducted by WCSD employees. (FOF #11) The student was referred for a psychiatric evaluation/consultation and the Psychiatrist was engaged to conduct the evaluation/consultation. (FOF #s 10 and 12) Parental consent was obtained for the conduct of the psychiatric evaluation/consultation by a “consulting psychiatrist”, but not for the review of student’s education records. (FOF #s 12-14 and 16) In the performance of the contracted

psychiatric services, the Psychiatrist needed to review some of the student's records, and did. (FOF #s 12 and 15)

Upon consideration of the above facts, both the Legal Counsel and the Psychiatrist met the conditions of "school officials" under the FERPA, 34 C.F.R. §99.31, specifically:

1. The WCSD outsourced services/functions that the WCSD would otherwise provide for itself: legal services and evaluation service/functions. (FOF#s 7 and 11; 34 C.F.R. §99.31(a)(1)(i)(B)(1))
2. The Legal Counsel and the Psychiatrist had a legitimate educational interest in the disclosed information. "Typically, a school official has a "legitimate educational interest" if the official needs to review an education record in order to fulfill his or her professional responsibility." (113 LRP 3426 (OSEP 2012); 106 LRP 47932 (FPCO, 2006)) In this case, it is determined that the contractors needed access to the disclosed personally identifiable information to fulfill their contractual obligations. (FOF #s 8 and 12) The legitimate educational interests of the contractors are further substantiated in that had the WCSD provided the services itself, internal disclosure of the information to its employees would have been authorized. (11 FAB 3134 (FPCO 2008); 34 C.F.R. §99.31(a)(1)(i)(A))
3. "The "direct control" requirement is intended to apply only to the outside party's provision of specific institutional services or functions that have been outsourced and the education records provided to that outside party to perform the services or function." (Discussion of the 2008 amendments to the FERPA regulations: <http://www2.ed.gov/legislation/FedRegister/finrule/2008-4/120908a.pdf>)

The existence of contracts (FOF #s 8 and 11) with both the Legal Counsel and the Psychiatrist establish the WCSD's direct control over the contractors with respect to the services provided by the contractors. (34 C.F.R. §99.31(a)(1)(i)(B)(2); 11 FAB 31 (FPCO, 2008)) Pursuant to 34 C.F.R. §99.31(a)(1)(i)(B)(2), the WCSD was also required to control the access of information to the contractors and did so. (FOF #s 8 and 15)

4. There is no dispute that the Legal Counsel and the Psychiatrist are subject to the FERPA requirements governing the use and redisclosure of personally identifiable information obtained from education records. (FOF #17; 34 C.F.R. §99.31(a)(1)(i)(B)(3))

As school officials under 34 C.F.R. §99.31(a)(1), the WCSD was authorized to disclose personally identifiable information from the education record of the student without parental consent to both the Legal Counsel and the Psychiatrist in the performance of their services/functions.

Therefore, the complaint investigation team concluded that the WCSD complied with 34 C.F.R. §300.622 and NAC §388.289(3) when personally identifiable information contained in the student's education records was disclosed to Legal Counsel and to the Psychiatrist without parental consent.

Issue Three: Whether the WCSD complied with the record of access requirements in 34 C.F.R. §300.614 and NAC §388.287(4) when the Legal Counsel and the Psychiatrist obtained access to the student's education records.

Both the IDEA, 34 C.F.R. §300.614, and the NAC, §388.287(4), require that each public agency must keep a record of the persons given access to the educational records it collects, maintains or uses. The record of access must include the name of the person; the date access was given; and the purpose for which the person is authorized to use the records. The NAC further provides the record of access must include the list of the types and locations of educational records it collects, maintains or uses relating to

pupils. (NAC §388.287(4)(d)) The only exception to this mandatory record of access is for parents and authorized employees who access the educational records.

The United States Department of Education, Office of Special Education Programs (OSEP) provided some guidance with regard to the distinction between authorized disclosure of education records under the IDEA and the record of access requirement:

“The Part B regulation set forth at 34 CFR §300.631 requires that each participating agency keep a record of parties obtaining access to records collected, maintained, or used under Part B. The regulation exempts access by parents and employees of the participating agency. While, under certain circumstances, Part B and the Family Educational Rights and Privacy Act (FERPA) permit access by officials of the State and Federal Departments of Education, since such individuals are not employees of the participating agency that maintains the records, the agency would still be required to maintain a record of their access. See also, 34 C.F.R. §§99.31(a)(3) and 99.35.” (23 IDELR 445 (OSEP, 1995))

Similarly under the IDEA, as discussed above, contractors who meet the definition of “school officials” may have access to the education record of a student, but a record of access would be required upon access to the student’s education record.

The Psychiatrist was provided access to the student’s Confidential Special Education Record at the school on 1/15/13 when the WCSD administrator retrieved documents from the student’s education record at the Psychiatrist’s behest in the course of the Psychiatrist’s evaluation of the student. (FOF #s 12 and 15) Neither the Psychiatrist nor the WCSD administrator recorded the Psychiatrist’s access to the student’s Confidential Special Education Record on the Record Access List. (FOF #s 18 and 19)

While the Psychiatrist had authorized access to the student’s record without parental consent, the absence of a record of access with the requisite content violates the IDEA, 34 C.F.R. §300.614, and the NAC §388.287(4). This noncompliance, however, is mitigated by the Parent’s consent for the psychiatric evaluation by a “consulting psychiatrist” and WCSD’s notification of the Parents on 2/1/13 of the Psychiatrist’s access to the student’s education record in the course of the evaluation, and the specific records reviewed. (FOF #20)

The Legal Counsel also was authorized to access the student’s education records without parental consent in the course of the performance of legal services. The record of access on the the student’s Confidential Special Education Record does not include any record of the Legal Counsel obtaining access to the student’s education record. (FOF #s 18 and 19)

However, the Legal Counsel did not directly access the student’s education records maintained by the WCSD, but rather the incidences of access were to personally identifiable information from the student’s records provided by the WCSD or the Parents. (FOF #9) This variance in access raises a legal question with regard to the scope of the requirement on the record of access: is this provision intended to apply to every disclosure of any document that is in an education record or only when the access is to the maintained education record?

The implications of an expansive reading of the record of access provisions in the IDEA and the NAC are far reaching and would affect the day-to-day operation of local educational agencies due to the incidence of email communications and other technological advancements in the exchange of information. For example, if the record of access provisions in the IDEA and the NAC were broadly interpreted, a school district would be required to record all email communications to an authorized school official on different dates that included personally identifiable information from an education record of a student and, the actual record and record access log may be maintained in another location. On the contrary, a

conservative interpretation would not diminish the protection of the confidentiality of information in education records or the right of parental consent since school officials who meet the requirements of 34 C.F.R. §300.622 are authorized to access education records without parental consent.

The requirement of the IDEA regarding a record of access has been in place and unchanged since the promulgation of the original regulations in 1977 to implement the Education for All Handicapped Children Act, P.L. 94-142. Other than the above cited policy letter, there is a paucity of other guidance from the OSEP with regard to the interpretation of this regulatory provision on the record of access.

In contrast, FERPA has been amended multiple times to reflect changing technology and changing modes of maintaining information (61 Fed. Reg. (November 21, 1996)) and to address the common practice of outsourcing institutional services and functions (73 Fed. Reg. pg. 7480 (December 9, 2008)). The 2008 amendment to the FERPA to allow the disclosure of personally identifiable information without parental consent to school officials also exempted the school officials from the FERPA record of access requirement:

“The Department has long recognized that FERPA does not prevent schools from outsourcing institutional services and functions; to require schools to record disclosures to these outside parties serving as school officials would be overly burdensome and unworkable.” (73 Fed. Reg. pg. 74815(December 9, 2008))

While the IDEA does not exempt the recordation of disclosures to school officials, the United States Department of Education has indicated in the past that it strives to maintain consistency in its interpretations of the confidentiality requirements in IDEA and FERPA for purposes of enforcement of, or compliance with, the IDEA. (51 IDELR 108 (OSEP 2008))

Given the position of the United States Department of Education regarding consistency with FERPA, it is instructive to consider additional authority in the determination of the scope of the requirement of the record of access. In the United States Supreme Court decision on the FERPA in Owasso Independent Schools et al. v. Falvo et al. (122 S.Ct. 934; 534 U.S. 426 (2002)), the U.S. Supreme Court used a similar (but not identical) provision in the FERPA on recordkeeping requirements on disclosures as an example in the reasoning:

“FERPA, for example, requires educational institutions to "maintain a record, kept with the education records of each student." §1232g(b)(4)(A). This record must list those who have requested access to a student's education records and their reasons for doing so. Ibid. The record of access "shall be available only to parents, [and] to the school official and his assistants who are responsible for the custody of such records." Ibid.

Under the Court of Appeals' broad interpretation of education records, every teacher would have an obligation to keep a separate record of access for each student's assignments. Indeed, by that court's logic, even students who grade their own papers would bear the burden of maintaining records of access until they turned in the assignments. We doubt Congress would have imposed such a weighty administrative burden on every teacher, and certainly it would not have extended the mandate to students.

Also FERPA requires "a record" of access for each pupil. This single record must be kept "with the education records." This suggests Congress contemplated that education records would be kept in one place with a single record of access. By describing a "school official" and "his assistants" as the personnel responsible for the custody of the records, FERPA implies that education records are institutional records kept by a single central custodian, such as a registrar,

not individual assignments handled by many student graders in their separate classrooms.”

The record of access provisions in the IDEA and the NAC employ the same singular term as FERPA: “a record” or “the record” of parties obtaining access to education records. Both the IDEA, 34 C.F.R. §300.616, and the NAC, §388.287(6), have an additional requirement regarding the types and locations of education records. Therefore, it is recognized for students with disabilities a district may maintain a student’s education records in multiple locations and, if they do so, given the Owasso decision, a party’s access to the “institutional” education record maintained in the location would require recordation in “the record” of access.

Without definitive authority to the contrary and after consideration of the foregoing, the complaint investigation team has determined that the WCSD’s failure to record the Legal Counsel’s authorized access to personally identifiable information from the student’s education record was not a violation of the record of access provisions (34 C.F.R. §300.614; NAC §388.287(4)) since the Legal Counsel did not access the “institutional” education record maintained by the WCSD.

Therefore, the complaint investigation team concluded that the WCSD did not comply with 34 C.F.R. §300.614 and NAC §388.287(4) with regard to the record of access of the Psychiatrist obtaining access to the student’s education records, but was not required to record the Legal Counsel’s access to personally identifiable information since the access was not to the “institutional” education record maintained by the WCSD. The failure to record the Psychiatrist’s access to the student’s records is a procedural inadequacy only since it was mitigated by the consent of the Parents to the psychiatric evaluation/consultation by a “consulting psychiatrist” and subsequent notice to the Parents of the access.

Issue Four: Whether the WCSD complied with 34 C.F.R. §300.623(c) and NAC §388.289(1)(c) to train or instruct all persons collecting or using personally identifiable information regarding the policies and procedures for protecting personally identifiable information.

Both the IDEA and the NAC require a public agency to train or instruct all persons collecting or using personally identifiable information regarding the State’s policies and procedures in effect to ensure to the protection of the confidentiality of any personally identifiable information in conformance with the requirements of the IDEA, Part B and 34 C.F.R. Part 99. (34 C.F.R. §300.623(c); NAC §388.289(1)(c)) The WCSD had a FERPA Training Manual during the time period of this Complaint that was used by the WCSD General Counsel when he conducted FERPA trainings. However, the Training Manual did not include all the additional IDEA and NAC, Chapter 388, confidentiality of information requirements. (FOF # 21) The WCSD did conduct several trainings and/or provide instruction on the FERPA during the time period of the Complaint. (FOF # 22) However, the WCSD did not provide documentation that all WCSD personnel collecting or using personally identifiable information had received training or instruction regarding the additional IDEA and NAC, Chapter 388, confidentiality of information requirements for students with disabilities. The absence of the required training or instruction regarding these State policies and procedures on the protection of the confidentiality of any personally identifiable information for students with disabilities violated the requirements of the NAC, Chapter 388, the IDEA, Part B, and 34 C.F.R. Part 99.

Therefore, the complaint investigation team concluded that the WCSD did not comply with 34 C.F.R. §300.623(c) and NAC §388.289(1)(c) to train or instruct all persons collecting or using personally identifiable information regarding the policies and procedures for protecting personally identifiable information.

ORDER FOR CORRECTIVE ACTION

WCSD is required to take corrective action to address the violations found in this Complaint investigation; specifically the WCSD did not comply with:

- 1) Title 34 C.F.R. §300.623(d) and NAC §388.289(1)(d) to maintain a current listing for public inspection of the names and positions of its employees within the school district who may have access to personally identifiable information;
- 2) Title 34 C.F.R. §300.614 and NAC §388.287(4) with regard to the record of access of the Psychiatrist obtaining access to the student's education records;
- 3) Title 34 C.F.R. §300.623(c) and NAC §388.289(1)(c) to train or instruct all persons collecting or using personally identifiable information regarding the policies and procedures for protecting personally identifiable information.

I. Upon consideration of the findings in this Complaint and prior complaint findings regarding the confidentiality of information requirements in the IDEA, Part B and NAC, Chapter 388, the WCSD is directed to comprehensively review the written policies, procedures, and forms/notices for protecting personally identifiable information under the IDEA, 34 C.F.R. §300.610 to §300.627 and the NAC, Chapter 388, and revise such policies and procedures if they are inconsistent with the requirements of the IDEA or NAC, Chapter 388. All training/instructional materials on the State's policies and procedures under the NAC §388.289 and 34 C.F.R. §300.623(c) must be revised consistent with any revisions to such policies, procedures and forms/notices. The review of the above must be completed by September 1, 2013.

Following the WCSD's adoption of the policies and procedures, a copy must be provided to the NDE within 15 days of completion.

II. Further, within 30 days of the receipt of this Report, the district must develop and submit to the NDE a proposed Correction Action Plan (CAP). The proposed CAP must:

- a. Set forth a plan to develop new safeguards to protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages in the WCSD in accordance with 34 C.F.R. §300.623 and NAC, §388.289;
- b. Set forth the timeline prior to the commencement of the 2013-2014 school year for the revision of the current listing for public inspection of the names and positions of its employees within the school district who may have access to personally identifiable information and establish procedures to automatically update the listing as necessary;
- c. Set forth the timeline prior to the commencement of the 2013-2014 school year for the revision of the Records Access List for student with disabilities' education records to include all content in the IDEA, 34 C.F.R. §300.614, and the NAC §388.287(4) and the plan to add the new List to these education records maintained by the WCSD to record prospective access, including the student in this Complaint;
- d. Set forth the timeline and process to provide training or instruction to all persons collecting or using personally identifiable information within the WCSD regarding the policies and procedures for protecting personally identifiable information under the IDEA and the NAC, Chapter 388, including the record of access requirements, no later than September 15, 2013.

The CAP in corrective action II must be approved by the NDE prior to implementation.

