

**KANSAS STATE DEPARTMENT OF EDUCATION  
SPECIAL EDUCATION AND TITLE SERVICES**

REPORT OF COMPLAINT  
FILED AGAINST  
UNIFIED SCHOOL DISTRICT # \_\_\_\_  
ON APRIL 30, 2020

DATE OF REPORT: MAY 29, 2020

This report is in response to a complaint filed with our office by \_\_\_\_\_ and \_\_\_\_\_, the father and mother respectively, on behalf of their son, \_\_\_\_\_. In the remainder of this report, \_\_\_\_\_ will be referred to as “the student”, \_\_\_\_\_ will be referred to as “the father”, \_\_\_\_\_ will be referred to as the “mother”, and both will be referred to as “the parents.”

The complaint is against USD # \_\_\_\_, which contracts with the \_\_\_\_\_ Special Education Cooperative (\_\_\_\_\_) to provide special education services. In the remainder of this report the terms “USD # \_\_\_\_”, “public agency”, and “school district” shall refer to both of these responsible public agencies.

The Kansas State Department of Education (KSDE) received the complaint on April 30, 2020. The KSDE allows for a 30-day timeline to investigate the child complaint, which ends on May 29, 2020.

**Investigation of Complaint**

Nancy Thomas, Complaint Investigator, interviewed the parents by telephone on May 15, 2020 as part of the investigation process. In addition, \_\_\_\_\_, Superintendent of USD # \_\_\_\_ was interviewed on May 15, 2020.

In completing this investigation, the Complaint Investigator reviewed the following materials:

- Email written by the mother to \_\_\_\_\_, Principal of \_\_\_\_\_ Elementary School in USD # \_\_\_\_, dated March 19, 2019 at 7:31 p.m.
- Email written by the mother to Mr. \_\_\_\_\_ [principal] dated March 20, 2019 at 6:54 p.m.

- Email written by Mr. \_\_\_\_\_ [superintendent] to the mother dated October 9, 2019 at 8:19 a.m.
- Email written by the mother to Mr. \_\_\_\_\_ [superintendent] dated November 7, 2019 at 4:28 p.m.
- Email written by Mr. \_\_\_\_\_ [principal] to the father dated November 21, 2019 at 10:50 a.m.
- Email written by the father to Mr. \_\_\_\_\_ [principal] dated February 19, 2020 at 6:39 p.m.
- Email written by the father to Mr. \_\_\_\_\_ [principal], dated March 9, 2020 at 5:03 p.m.
- Email written by Mr. \_\_\_\_\_ [principal] to the father dated March 9, 2020 at 5:27 p.m.
- Email written by Mr. \_\_\_\_\_ [principal] to the father dated March 9, 2020 at 5:32 p.m.
- Email written by Mr. \_\_\_\_\_ [principal] to the father dated March 23, 2020 at 5:37 p.m.
- Email written by Mr. \_\_\_\_\_ [principal] to the father dated March 30, 2020 at 7:34 a.m.
- Email written by the father to Mr. \_\_\_\_\_ [principal] dated March 30, 2020 at 8:07 a.m.
- Email written by Mr. \_\_\_\_\_ [principal] to the father dated March 30, 2020 at 9:27 a.m.
- Email written by the father to Mr. \_\_\_\_\_ [principal] dated March 30, 2020 at 2:29 p.m.
- Email written by the father to Mr. \_\_\_\_\_ [principal] dated April 7, 2020 at 10:23 a.m.
- Email written by Mr. \_\_\_\_\_ [superintendent] to the father dated April 7, 2020 at 10:28 a.m.
- Email written by the father to Mr. \_\_\_\_\_ [superintendent] dated April 7, 2020 at 10:31 a.m.
- Email written by Mr. \_\_\_\_\_ [superintendent] to the father dated April 7, 2020 at 10:36 a.m.
- Email written by Mr. \_\_\_\_\_ [superintendent] to the father dated April 7, 2020 at 11:22 a.m.
- Email written by the father to Mr. \_\_\_\_\_ [superintendent] dated April 7, 2020 at 11:27 a.m.
- Email written by Mr. \_\_\_\_\_ [superintendent] to the father dated April 7, 2020 at 11:31 a.m.

- Email written by the father to Mr. \_\_\_\_\_ [superintendent] dated April 14, 2020 at 1:13 p.m.
- Email written by the father to Mr. \_\_\_\_\_ [superintendent] dated April 24, 2020 at 6:46 p.m.
- Email written by Mr. \_\_\_\_\_ [superintendent] to the father dated April 24, 2020 at 7:35 p.m.
- Email written by the father to Mr. \_\_\_\_\_ [superintendent] dated April 24, 2020 at 7:52 p.m.
- Email written by the father to Mr. \_\_\_\_\_ [principal] dated April 27, 2020 at 10:23 a.m.
- Email written by Mr. \_\_\_\_\_ [principal] to the father dated April 27, 2020 at 10:28 a.m.
- Email written by Mr. \_\_\_\_\_ [principal] to the father dated April 27, 2020 at 10:41 a.m.
- Email written by the father to Mr. \_\_\_\_\_ [principal] dated April 27, 2020 at 3:14 p.m.
- Email written by the Mr. \_\_\_\_\_ [superintendent] to \_\_\_\_\_, Assistant Special Education Director for \_\_\_\_\_ [the Cooperative], dated May 1, 2020 at 5:36 p.m.
- Email written by Dr. \_\_\_\_\_ [Assistant Special Education Director] to Mr. \_\_\_\_\_ [superintendent] dated May 1, 2020 at 5:40 p.m.
- Email written by Mr. \_\_\_\_\_ [superintendent] to Dr. \_\_\_\_\_ [Assistant Special Education Director] dated May 1, 2020 at 5:43 p.m.
- Email written by Dr. \_\_\_\_\_ [Assistant Special Education Director] to the father dated May 5, 2020 at 10:04 a.m.
- Email written by Dr. \_\_\_\_\_ [Assistant Special Education Director] to the complaint investigator dated May 6, 2020 at 10:22 a.m.
- Email written by Mr. \_\_\_\_\_ [superintendent] to the complaint investigator dated May 6, 2020 at 10:29 a.m.
- Email written by Dr. \_\_\_\_\_ [Assistant Special Education Director] to Mr. \_\_\_\_\_ [superintendent] dated May 6, 2020 at 10:38 a.m.
- Email written by Mr. \_\_\_\_\_ [superintendent] to Dr. \_\_\_\_\_ [Assistant Special Education Director] dated May 6, 2020 at 10:54 a.m.
- Email written by the mother to the members of the USD #\_\_\_ School Board dated May 6, 2020 at 8:04 p.m.
- Email written by Mr. \_\_\_\_\_ [superintendent] to the complaint investigator dated May 18, 2020 at 10:42 a.m.

- Email written by the father to Mr. \_\_\_\_\_ [superintendent] dated May 19, 2020 at 12:33 p.m.
- Email written by Mr. \_\_\_\_\_ [superintendent] to the father date May 19, 2020 at 1:44 p.m.
- Email written by the father to Mr. \_\_\_\_\_ [superintendent] dated May 19, 2020 at 2:29 p.m.
- Email written by the father to Mr. \_\_\_\_\_ [superintendent] dated May 19, 2020 at 9:41 p.m.
- Email written by Mr. \_\_\_\_\_ [superintendent] to the father dated May 19, 2020 at 10:44 p.m.
- Email written by the father to Mr. \_\_\_\_\_ [superintendent] dated May 20, 2020 at 5:48 a.m.
- Email written by Mr. \_\_\_\_\_ [superintendent] to the father dated May 20, 2020 at 9:23 a.m.
- Email written by the father to Mr. \_\_\_\_\_ [superintendent] dated May 20, 2020 at 12:47 p.m.
- Email written by Mr. \_\_\_\_\_ [superintendent] to the father date May 20, 2020 at 1:05 p.m.
- Email written by the father to Mr. \_\_\_\_\_ [superintendent] dated May 20, 2020 at 9:23 a.m.
- Email written by Mr. \_\_\_\_\_ [principal] to the father dated May 21, 2020 at 10:20 a.m.
- Email written by the father to Mr. \_\_\_\_\_ [principal] dated May 21, 2020 at 10:51 a.m.
- Email written by Mr. \_\_\_\_\_ [superintendent] to the father dated May 21, 2020 at 11:01 a.m.
- Email written by the father to Mr. \_\_\_\_\_ [superintendent] dated May 21, 2020 at 11:12 a.m.
- Ten Screenshots of USD #\_\_\_\_ Facebook posts dated between March 25, 2020 and April 27, 2020
- Screenshot of PowerSchool SIS showing Net Access to the student's file on October 12, 2019 by the parent
- Copy of the 2019-20 School Calendar for USD #\_\_\_\_
- Copy of the Kansas Governor's Executive Order 20-07 temporarily closing K-12 school buildings to slow the spread of COVID-19 dated March 17, 2020
- Copy of USD #\_\_\_\_ School Board Policy on Records provided by Mr. \_\_\_\_\_ [superintendent] in an email to the complaint investigator

- Copy of USD #\_\_\_ Bullying Prevention Plan provided to the father by Mr. \_\_\_\_\_ [principal]
- Guidance document from the United States Department of Education (USDE) titled “FERPA and the Coronavirus Disease 2019 (COVID-19) Frequently Asked Questions (FAQs)” dated March 2020
- Guidance document from the USDE titled “Supplemental Fact Sheet Addressing the Risk of COVID-19 in Preschool, Elementary and Secondary Schools While Serving Children with Disabilities” dated March 21, 2020
- Report to Congress of U.S. Secretary of Education Betsy DeVos dated April 27, 2020

### **Background Information**

This investigation involves a male student who was enrolled in the 6th grade at \_\_\_\_\_ Elementary School in USD #\_\_\_ during the 2019-20 school year. He has attended USD #\_\_\_ since second semester of 2<sup>nd</sup> grade. Per parent report, the student has medical diagnoses of oppositional defiant disorder (ODD), attention deficit hyperactivity disorder (ADHD), and depression. USD #\_\_\_ conducted an initial special education evaluation of the student during the first semester of the 2018-19 school year resulting in a determination that the student was not eligible for special education services on January 17, 2019.

The parent did not agree with the evaluation provided by the district and requested an independent educational evaluation (IEE) at public expense on March 4, 2019. USD #\_\_\_ contracted with Lauren Spears, psychologist at Neuroeducational Associates, to conduct the IEE. The multidisciplinary team including the parent considered this IEE on November 25, 2019 and the student was determined eligible for special education and related services due to the exceptionality of emotional disturbance.

USD #\_\_\_ convened an Individualized Education Program (IEP) team meeting on December 18, 2019 for the purpose of developing an initial IEP for the student. However, the student did not begin to receive the special education services until February 19, 2020. In a previously investigated complaint on April 15, 2020, a finding of noncompliance was made against USD #\_\_\_ for the delay in implementing services and the district was required to offer a minimum of 1,920 minutes of compensatory special education services to the student.

### **Issue**

Based upon the written complaint, the parents raised one issue that was investigated.

**ISSUE ONE:** The USD #\_\_\_\_, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide the parent with access to the students' educational records in a timely manner during the 2019-20 school year.

The investigator notes that the parents also made this same allegation in regard to another one of their children who attends school in USD #\_\_\_\_; however, that child has not been identified as a child with a disability. Under the IDEA and the Kansas Special Education for Exceptional Children Act, the Kansas State Department of Education only has the authority to investigate complaints concerning alleged violations of state or federal special education laws. The protections of the IDEA, aside from certain protections within the context of discipline, are only available to students with disabilities and therefore the allegation with respect to the child who does not have a disability will not be investigated. Allegations of violations of the Family Education Rights and Privacy Act (FERPA) concerning a student without a disability should be addressed to the Family Policy Compliance Office in the U.S. Department of Education.

### **Positions of the Parties**

The parents reported USD #\_\_\_\_ did not respond in a timely manner to their request for access to the educational records of the student made on March 9, 2020. They also believe the records that were finally provided to them in May 2020 did not contain all the student's educational records collected and maintained by the school district. They reported that school staff insist that all of the student's educational records are available in PowerSchool but they are only able to access the student's grades.

USD #\_\_\_\_ reported they responded as soon as possible to the parent's request for access to inspect and review the student's records in light of the COVID-19 pandemic restrictions and school building closure that was ordered by Kansas Governor Laura Kelly on March 17, 2020. School staff believe the parent was provided access to the student's general education records through the electronic records available to the parent in PowerSchool and the special education records that were mailed to the parents by the \_\_\_\_\_ [the Cooperative] on May 5, 2020.

### **Findings of the Investigation**

Documentation showed the father sent an email to \_\_\_\_\_, Principal of \_\_\_\_\_ Elementary School, on March 9, 2020 at 5:03 p.m. requesting a copy of all the student's school records or to view such records. Mr. \_\_\_\_\_ [principal] acknowledged this request for records on that same date at 5:32 p.m. indicating that he would discuss the request with \_\_\_\_\_, Superintendent of USD #\_\_\_\_, and "get back to you on when we can fulfill your request."

Interviews found and documentation showed that the spring break for USD #\_\_\_\_ was March 13, 2020 through March 20, 2020. Mr. \_\_\_\_\_ [superintendent] reported that the school district was closed by order of Governor Kelly on March 17, 2020 in response to the COVID-19 pandemic. This closure required individuals to restrict activities and persons at high risk of severe illness from COVID-19 to remain at home. For these reasons, Mr. \_\_\_\_\_ [superintendent] reported that the office staff at USD #\_\_\_\_ began working from home beginning on March 23, 2020.

On March 23, 2020, Mr. \_\_\_\_\_ [principal] emailed the father stating, "I just wanted to let you know that, despite our 10 day break, we have not forgotten about you. We will get in touch with you later this week."

On March 30, 2020 at 7:34 a.m., Mr. \_\_\_\_\_ [principal] emailed the father indicating "Just about everything has been gathered up and counted. Given our current situation, we will have to continue this process when school is back open for business." On that same date, the father responded to the email asking for an estimated timeline to receive the student's records and Mr. \_\_\_\_\_ [principal] answered via email indicating the timeline was unknown as the school was closed through the end of April.

On April 7, 2020 at 10:23 a.m., the father emailed Mr. \_\_\_\_\_ [principal] and Mr. \_\_\_\_\_ [superintendent] stating,

I have seen that the school is allowing parents to come and pick up packets. Considering the circumstances that we find ourselves in, not knowing for sure when the school will reopen this year, I am making a reasonable request for the records that are ready for me to view to be sent by certified mail or arranged for me to pick up in person, the same as one of these packets for other parents.

Mr. \_\_\_\_\_ [superintendent] responded on the same date at 10:28 a.m. indicating the office staff who normally print the copies of school records were working from home and unable to print off the copies at this time. He indicated that the only records that

Mr. \_\_\_\_ [principal] could access were in PowerSchool and that the parent already had access to those records. The father answered via an email at 10:31 a.m. stating, "So from the first email sent on March 30<sup>th</sup>, \_\_\_\_\_ [principal] says the records are gathered up and counted. That sounds like they are printed."

Mr. \_\_\_\_ [superintendent] reported and documentation showed that USD # \_\_\_\_ has a school board policy requiring advanced payment for the expense of copying records. Mr. \_\_\_\_ [superintendent] emailed the father on April 7, 2020 at 11:22 a.m. stating, "The count had been started [for billing purposes] but it is not complete yet." The father then emailed Mr. \_\_\_\_ [superintendent] offering to "come in and make the copies under the supervision of the staff." Mr. \_\_\_\_ [superintendent] responded via email at 11:31 a.m. stating, "Appreciate the offer however we don't have keys for nurse files, and sped files. The individual staff members have those keys."

On April 14, 2020, the father emailed Mr. \_\_\_\_ [superintendent] again asking the school to make accommodations so that he would be able to have access to the student's files.

On April 24, 2020, the father again emailed Mr. \_\_\_\_ [superintendent] asking for an approximate date to get the copies of the student's records from USD # \_\_\_\_ and Mr. \_\_\_\_ [superintendent] replied via email stating, "As the previous emails have stated, once the Governor lifts the stay at home order." The father responded to this email indicating that the stay at home order was set to expire on May 1, 2020 and again requested an approximate date to access the student's records because he would need to make arrangements to take off work in order to have access to the records during school hours.

On April 27, 2020, Mr. \_\_\_\_ [principal] emailed the father stating, "Once we come back to school, we will get these [copying the records] completed as soon as possible. Once they are completed, we will let you know so you can make arrangements with your work to pick them up." The father responded via email again requesting to be able to pick up the student's school records just as other parents had been able to pick up paper packets for their students from the school.

On May 1, 2020, Dr. \_\_\_\_\_, Assistant Special Education Director at \_\_\_\_\_ [the Cooperative], and Mr. \_\_\_\_ [superintendent] were notified of the parent complaint and investigation via email from the Special Education and Title Services (SETS) office in the Kansas State Department of Education. Dr. \_\_\_\_\_ [Assistant Special Education



Director] indicated this was the first time she became aware of the parent's request for access to the student's educational records.

Mr. \_\_\_\_\_ [superintendent] emailed Dr. \_\_\_\_\_ [Assistant Special Education Director] on that same date stating,

I have received the formal complaint. In the email chain, I verified with the father that he had access to PowerSchool. The vast majority of the records are available online for him to access. In cooperation with our County Health agency, our offices are closed meaning the staff is working from home. This was done based on the age and current health of the majority of our office staff. I also mentioned file cabinets that would have additional information. Our school Psychologist lives in the \_\_\_\_\_ area, which was under travel restrictions. We were concerned with her health as well. We were not able to give a date and still can not [sic] give a definite date that staff will be back in the office. At this time, it will be after consultation with our local health officials before we open and at that time, we can honor his request to have them printed. We honestly thought this upcoming week may [sic] have been when we were able to have the offices open however with current order we can not [sic] at this point. The father also mentioned that others are picking up educational packets. Those are from individual teachers, not office staff.

Dr. \_\_\_\_\_ [Assistant Special Education Director] responded to Mr. \_\_\_\_\_ [superintendent] on that same date indicating that \_\_\_\_\_ [the Cooperative] would be copying "all that's in his file here at the Coop and get it sent out as soon as possible." Interviews and documentation showed the parent received the following documents via email from Dr. \_\_\_\_\_ [Assistant Special Education Director] on May 5, 2020:

- Notification of Meeting (NOM) dated November 18, 2019
- Multidisciplinary Staffing Summary dated November 25, 2019
- Evaluation/Reevaluation Eligibility Report dated November 25, 2019
- 12/3/19 NOM dated December 3, 2019
- Multidisciplinary Staffing Summary dated December 18, 2019
- Prior Written Notice (PWN) dated December 18, 2019
- NOM dated February 18, 2020
- Multidisciplinary Staffing Summary dated February 18, 2020
- Individualized Education Program (IEP) dated February 18, 2020
- Continuous Learning Plan letter dated March 30, 2020

Continuous Learning Plan dated March 30, 2020

PWN dated March 30, 2020

On May 6, 2020, Mr. \_\_\_\_\_ [superintendent] noted “PowerSchool online access has everything except for special education records and anything that would be handwritten in the nurse’s files. The family has had access to that for quite some time“. Interview and documentation showed that the parent had only accessed PowerSchool one time during the 2019-20 school year on October 12, 2019.

On May 18, 2020, Mr. \_\_\_\_\_ [superintendent] emailed the complaint investigator with the following information:

Over the weekend, the county eased up on restrictions therefore allowed [sic] offices to open back up. This morning I have learned that the student’s family has had all the information all along. I have confirmed that all of the general education information is in PowerSchool and all of the Special Education information had been sent late December early January. (Same documents that were emailed recently by \_\_\_\_\_ [Assistant Special Education Director]). In addition, I found out that the student was taken into KVC custody and exited from our school on 4-10-2020.”

On May 19, 2020 at 12:33 p.m., the father emailed Mr. \_\_\_\_\_ [superintendent] again requesting a timeline to have access to the student’s records. Mr. \_\_\_\_\_ [superintendent] responded via email at 1:44 p.m. on that same date stating, “You currently have everything in electronic version between PowerSchool and what you have received in the mail from special education and via email. If you want it printed we can do that for .25 per page.”

On May 20, 2020 at 5:48 a.m., the father responded in an email to Mr. \_\_\_\_\_ [superintendent] that he did want paper copies of the records and again asked if the documents referenced in the earlier email were all of the student’s records. Mr. \_\_\_\_\_ [superintendent] replied on that same date at 9:23 a.m., indicating that a final count for payment of the copies would be sent and stating, “Everything should be there. If you think something is missing let us know.”

On May 20, 2020 at 12:47 p.m., the father emailed Mr. \_\_\_\_\_ [superintendent] stating: There is [sic] missing documents. The 504 plan, the paperwork that you received on January 16<sup>th</sup> of 2019 from the SEK mental health therapist, so

you could give my son a 504 plan. Medicine log, from when the school nurse administered the student's medicine. The documentation from you and \_\_\_\_\_ [principal] documenting bullying of the student by a teacher, students, and retaliation by \_\_\_\_\_ [principal]. I have in emails that you and \_\_\_\_\_ [principal] have documented multiple occasions. Where is the documentation?

On May 20, 2020 at 1:05 p.m., Mr. \_\_\_\_\_ [superintendent] replied in an email to the father stating:

The 504 plan is no longer active. You did receive an email copy of it however. We no longer administer meds. Those [sic] are removed when the administration ceases. Bullying is documented in a desk file as it holds multiple names.

Mr. \_\_\_\_\_ [superintendent] explained that the student's 504 plan is maintained in PowerSchool and indicated that the parents initially received a copy of the 504 plan when it was originally developed. He stated that the parents continue to have access to the 504 plan through PowerSchool. Mr. \_\_\_\_\_ [superintendent] reported that while the student has not taken medication at school for several years, the student's medication administration records are kept in paper form in a locked file cabinet by the school nurse.

In an email to Mr. \_\_\_\_\_ [superintendent] sent at 4:34 p.m., the father stated:

So once again, I have the right to access to all of my son's records. Electronic and paper. The reason [sic] the school has 45 days to comply is because they may have to black out names from documentation. It is the school's fault not mine that they did not use their 45 days plus their additional 26 days and counting to prepare the electronic documents for me to have access to them. So when can I get access to the remainder of the records?

Mr. \_\_\_\_\_ [principal] sent an email to the father on May 21, 2020 at 10:20 a.m. indicating that he has printed a total of 144 pages of records and the total owed is \$36. On that same date, Mr. \_\_\_\_\_ [superintendent] also emailed the father stating, "Everything you currently have electronically was printed and will go in the mail. That is everything that makes up the student file."

### **Applicable Regulations and Conclusions**

Federal regulations implementing the Individuals with Disabilities Education Act (IDEA), at 34 C.F.R. 300.613(a), require school districts to permit parents to inspect and review any education records relating to their child that are collected, maintained, or used by the agency. School districts must comply with a request without unnecessary delay and before any meeting regarding an IEP, and in no case more than 45 days after the request has been made.

Federal regulations at 34 C.F.R. 300.611(b) state that “education records mean the type of records covered under the definition of ‘education records’ in 34 C.F.R. part 99 (the regulations implementing the Family Educational Rights and Privacy Act of 1977 (FERPA)).”

34 C.F.R. part 99 which states that "education records " are records that are (1) directly related to a student and (2) maintained by an educational agency or institution or by a party acting for or on behalf of the agency or institution. “Record” means any information recorded in any way, including, but not limited to, handwriting, print, computer media, videotape, audiotape, film, microfilm, and microfiche.” Personal notes made by teachers and other school officials that kept in the sole possession of the maker and not shared with others are not considered education records. Additionally, law enforcement records created and maintained by a school or school district's law enforcement unit for a law enforcement purpose are not education records.

When education records include information on more than one child, federal regulations implementing the IDEA at 34 C.F.R. 300.615 require school districts to allow the parents of these children to inspect and review only the information relating to their child or to be informed of that specific information.

Two issues related to the parent’s request for access to the student’s educational records need to be addressed. The first issue is whether access to the records was provided to the parent in a timely manner. The second issue is which educational records the parent must be allowed to inspect and review because of the request.

In regards to the first issue, federal regulations at 34 C.F.R. 300.613(a) require USD #\_\_\_ to provide the parent with access to the educational records used by the school district without unnecessary delay and in no case more than 45 days from the date of the request. In this case, documentation and interviews found that the parent requested access to the student’s educational records on March 9, 2020 in an email to the school principal and that this request was acknowledged by USD #\_\_\_ on that same date.

Based on this information, USD # \_\_\_ was required to provide the parent with access to the student's educational records no later than April 23, 2020.

The school district reported the parent had ongoing electronic access to the student's general education records through PowerSchool and that access to the special education records was provided on May 5, 2020 when \_\_\_\_\_ [the Cooperative] emailed copies of all the student's special education records to the parent. This is beyond the 45-day timeline but the school district argues that the 45-day timeline should be extended beyond April 23, 2020 in light of the restrictions and school closure ordered by the Governor on March 17, 2020.

USD # \_\_\_ reported that because of the Governor's order, office staff were not available to make copies of the educational records and administrators lacked access to any records contained in locked file cabinets because the nurse and school psychologist were in sole possession of the keys. However, interviews and documentation showed that the parents offered to come to the schools to make copies of the records under the supervision of school staff in an effort to access the student's records but that this offer was declined.

It is noted that under the provisions of the Coronavirus Aid, Relief, and Economic Security (CARES) Act, the United States Department of Education was tasked with making recommendations in regards to IDEA timelines. These recommendations were presented to Congress on April 27, 2020 with the only recommended change in special education timelines being related to the identification of infants and toddlers for special education and related services. No other changes were recommended to any other special education timeline. For this reason, the 45-day timeline to provide the parent with access to the student's educational records cannot be extended.

In regards to the second issue, federal regulations at C.F.R. 300.611(b) define an educational record as any record that is directly related to a student and is maintained by an educational agency or institution. Interviews and documentation showed USD # \_\_\_ administrators believed that the electronic version of the records in PowerSchool combined with the special education records provided by \_\_\_\_\_ [the Cooperative] constituted "everything that made up the student file" when responding to the parent's request for access to the student's educational records. However, the parents reported the existence of three other documents collected and maintained by USD # \_\_\_ that were directly related to the student and contained personally identifiable information.

The first document was the student's 504 plan. USD # \_\_\_ argues that this document is not part of the student's educational records because the 504 plan is no longer active and the parent had previously been provided with a copy of the 504 plan. It is clear that the student's 504 plan is directly related to the student, contains personally identifiable information and meets the definition of an educational record. As such, the parents should have been provided access to the 504 plan following the March 9, 2020 request even though a copy had previously been provided to the parent. While it is noted that USD # \_\_\_ did make the 504 plan available for the parent to inspect and review on PowerSchool, the parents were unaware of how to access this educational record.

It is noted that Mr. \_\_\_\_\_ [superintendent] expressed the same mistaken belief that the provision of special education records following an IEP team meeting fulfills the requirement to provide the parent with access to educational records when he stated, "I have confirmed that all of the general education information is in PowerSchool and all of the Special Education information had been sent [to the parent] in late December early January. (Same documents that were emailed recently by \_\_\_\_\_ [Assistant Special Education Director])."

The second document was the student's medication administration records. USD # \_\_\_ contends that this document is not part of the student's educational record because the records related to the administration of medication had been removed because the student was no longer being administered medication at school. Again, this document is clearly related to the student, contains personally identifiable information, and meets the definition of an educational record. As such, the parent should have been provided access to the medication administration records following the March 9, 2020 request.

The third type of document that the parent requested was any report of bullying that involved the student. USD # \_\_\_ has a school board policy that requires reports of bullying to be documented and acknowledged that the records of bullying were kept in a desk file. However, USD # \_\_\_ argued that the student's parents did not have access to those educational records because they also contained the names of other students. Federal regulations at 34 C.F.R. 300.615 require school districts to provide the parents access to information in records containing the names of multiple students by only sharing the information that was directly related to their student. Thus, the parent should have been provided with a redacted version of the bullying records that were directly related to their student following the March 9, 2020 request.

Based on the foregoing, a violation of special education statutes and regulations for failing to provide the parent with access to all of the student's educational records collected, maintained, or used by the school district within 45 days after the request was made is substantiated.

### Corrective Action

Information gathered in the course of this investigation has substantiated noncompliance with special education statutes and regulations. A violation has occurred in the following area:

- A. Federal regulations implementing the Individuals with Disabilities Education Act (IDEA) at 34 C.F.R. 300.613(a) that require school districts to permit parents to inspect and review any education records relating to their child that are collected, maintained, or used by the agency without unnecessary delay, but in no case more than 45 days after the request has been made.

In this case, interviews and documentation found USD #\_\_\_ failed to provide the parent with access to all of the student's educational records collected, maintained, or used by the agency within 45 days of the parent's request dated March 9, 2020.

Based on the foregoing, USD #\_\_\_ is directed to take the following actions:

1. Within 15 calendar days of the date of this report, USD #\_\_\_ shall submit a written statement of assurance to Special Education and Title Services (SETS) stating that it will:
  - a. Comply with Federal regulations implementing the Individuals with Disabilities Education Act (IDEA) at 34 C.F.R. 300.613(a) that require school districts to permit parents to inspect and review any education records relating to their child that are collected, maintained, or used by the agency without unnecessary delay, but in no case more than 45 days after the request has been made.
2. No later than August 30, 2020, USD #\_\_\_ shall review and revise or create written procedures to ensure parents are provided with access to inspect and review all of their student's educational records that are collected, maintained, or used by the school district within the timeline required by 34 C.F.R.

300.613(a). This procedure must address, at a minimum, all of the following: ensure that there are multiple methods in place to access all locations where student education records are stored in the event one method is not available; provide for a method to access student education records in the event of school building closure; and provide a method for determining what records exist for a given child to ensure the parent is being provided with full access to the child's education record. No later than September 1, 2020, USD #\_\_\_ will provide documentation of this written procedure to SETS in order for SETS to review and approve the procedure before staff are trained on the procedure as required in Corrective Action 3.

3. No later than September 30, 2020, USD #\_\_\_ will provide training to all staff in the district who are involved in the process of providing parents access to educational records of students with IEPs regarding the requirements related to providing parents the right to inspect and review any educational records related to their student within the required timeline. At a minimum, this training must instruct staff on the requirements of the written procedure developed as a result of Corrective Action 2, address what constitutes an education record, and the required timeline for providing access to such education records. No later October 1, 2020, USD #\_\_\_ will provide documentation to SETS of the name and position of the USD #\_\_\_ staff member who conducted the training, the date and content of the training as well as a sign-in sheet signed by all individuals who attended the training.
4. No later than July 1, 2020, USD #\_\_\_ shall provide the student's parents with access to inspect and review the three types of educational records identified by the parent as not being provided following the March 9, 2020 request. These records should include the following: 1) records related to the student's 504 plan, 2) redacted bullying records, and 3) medication administration records. No later July 15, 2020, USD #\_\_\_ will provide documentation to SETS of the date the access was provided, the method of the access, and a list of documents the parent had access to inspect and review.
5. Further, USD #\_\_\_ shall, within 10 calendar days of the date of this report, submit to Special Education and Title Services one of the following:
  - a) a statement verifying acceptance of the corrective action or actions specified in this report;



- b) a written request for an extension of time within which to complete one or more of the corrective actions specified in the report together with justification for the request; or
- c) a written notice of appeal. Any such appeal shall be in accordance with K.A.R. 91-40-51(f). While KSDE offices are closed and not able to accept postal mail due to the COVID-19 outbreak, appeals must be emailed to [formalcomplaints@ksde.org](mailto:formalcomplaints@ksde.org).

### **Right to Appeal**

Either party may appeal the findings in this report by filing a written notice of appeal. While KSDE offices are closed and not able to accept postal mail due to the COVID-19 outbreak, appeals must be emailed to [formalcomplaints@ksde.org](mailto:formalcomplaints@ksde.org). The notice of appeal must be emailed to the aforementioned address within 10 calendar days from the date of this report.

For further description of the appeals process, see Kansas Administrative Regulations 91-40-51 (f), which can be found at the end of this report.

*Nancy Thomas*

Nancy Thomas, Complaint Investigator

(f) Appeals.

(1) Any agency or complainant may appeal any of the findings or conclusions of a compliance report prepared by the special education section of the department by filing a written notice of appeal with the state commissioner of education. Each notice shall be filed within 10 days from the date of the report. Each notice shall provide a detailed statement of the basis for alleging that the report is incorrect.

Upon receiving an appeal, an appeal committee of at least three department of education members shall be appointed by the commissioner to review the report and to consider the information provided by the local education agency, the complainant, or others. The appeal process, including any hearing conducted by the appeal committee, shall be completed within 15 days from the date of receipt of the notice of appeal, and a decision shall be rendered within five days after the appeal process is completed unless the appeal committee determines that exceptional circumstances exist with respect to

the particular complaint. In this event, the decision shall be rendered as soon as possible by the appeal committee.

(2) If an appeal committee affirms a compliance report that requires corrective action by an agency, that agency shall initiate the required corrective action immediately. If, after five days, no required corrective action has been initiated, the agency shall be notified of the action that will be taken to assure compliance as determined by the department. This action may include any of the following:

- (A) the issuance of an accreditation deficiency advisement;
- (B) the withholding of state or federal funds otherwise available to the agency;
- (C) the award of monetary reimbursement to the complainant; or
- (D) any combination of the actions specified in paragraph (f)(2)