



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF INNOVATION AND IMPROVEMENT

Dr. Kay Baker
Superintendent
Salem-Keizer School District 24J
2450 Lancaster Drive NE
PO Box 12024
Salem, Oregon 97309

MAY 23 2006

Complaint No. 1251
Family Educational Rights
and Privacy Act

Dear Dr. Baker:

This Office informed Salem-Keizer School District 24J (District) of our findings in the referenced complaint by letter dated December 28, 2005. Attorney M [redacted] C [redacted], responding on behalf of the District by letter dated February 9, 2006, refused to provide the assurances we requested in order to close this investigation and asked for reconsideration because he disagrees with our interpretation of the facts and relevant law. Mr. C [redacted]'s letter does not offer any facts, analysis, or argument that would cause us to revise our findings.

As explained below, [redacted] (Parent) recently submitted to this Office additional allegations about the District refusal to allow her to inspect and review her child's (the Student's) education records in accordance with the Family Educational Rights and Privacy Act (FERPA). We are extending the time limit set forth in § 99.64(d) of the regulations and amending this complaint to include these new allegations because they raise issues that are the same or similar to those addressed in the current investigation. We will respond more fully to the District's February 9, 2006, letter upon completion of our investigation of these new allegations.

The subject of our August 17, 2005, letter was the Parent's April 13 and 14, 2004, request for access to records documenting speech and language pathology services provided to the Student, the Student's actual Test of Language Development (TOLD) results, and the TOLD manual that contains the actual test questions. The Parent advised us on May 9, 2006, that she submitted a subsequent request to the District for access to the Student's education records on October 7, 2004. The Parent's October 7, 2004, records request asked for access to the following:

1. All IEP (individualized education program) meeting notes;
2. All IEP's;
3. All test results, scores;

4. All test scores conducted by J□M□ in November 2003;
5. All notes of J□M□ that represent data used to document the Student's progress toward her IEP goals, including "probe data" collected on the Student;
6. Any handwritten, typed, or computer-generated (including email) notes authored by school district personnel that refer to the Student or the Parent;
7. All speech/language therapy session notes from speech/language pathologist C□W□ that document the sessions conducted with the Student and the progress made by the Student, otherwise referred to as the "speech logs"; and
8. Any letters of correspondence to or from the District, its staff, or any contracted agency that are personally identifiable to the Student and/or the Parent.

The Parent provided this Office with a copy of the District's November 8, 2004, response from S□W□, which states (emphases added):

You have already reviewed some of these files, **some files are not education records subject to disclosure**, and some must be assembled. You listed several items you wanted copied which we will provide; including IEPs and IEP meeting notes; and test results/scores that are not test protocols, questions, and answers as defined in District Policy JR 4.03.01. In addition, you requested test scores conducted by J□M□ in October 2003, however, Ms. M□ conducted no tests during October 2003. Two tests were conducted in November 2003, and these will be included.

You reviewed substantially all of [the Student's] educational records on April 28, 2004, and had begun a second file review on June 9, 2004, which was not completed. Educational records as defined in Family Educational Privacy Rights Act [sic], Oregon Administrative Rule 581-021-022, et seq., and District Policy JR include those records that are directly related to a student and maintained by the District such as:

1. Transcripts of courses taken and grades;
2. Records of attendance;
3. Tests relating specifically to achievement or measurement of ability; and
4. Health records.

Beyond that, educational records do not include certain records defined in Board Policy JR 1.01.02, which is attached.

With respect to your request for 'any hand-written, typed, or computer-generated (including email) notes authored by school district personnel which refer to myself or [the Student]' and 'any letters of correspondence to or from the district, its staff, or any contracted agency which are personally identifiable regarding [the Student] and/or her parent ...', please note that your correspondence is not a record that is or will be maintained by the School District as an educational record. However, **your request for**

email files and computer files has been considered as a public record request under ORS Chapter 192 and since the scope of your request is broad, **there may be email files and computer files or hard-copy files, in various locations throughout the [District]**. Attached as Exhibit A is a listing of most, but not necessarily all types of electronic and written student information locations. These locations may or may not contain a reference or file concerning you or [the Student]. Some, but not all, of these locations may be subject to exemption from disclosure under Oregon's Public Records law.

This letter, and Ms. W[redacted]'s follow-up letter dated November 18, 2004, advised the Parent that in accordance with Oregon's public records law, the District would charge the Parent for the cost of making certain records available. Ms. W[redacted]'s November 18 letter states (emphases added):

...[District] policy JR 4.03 – Student Education Records, and ORS 192.501 speak to records such as tests [sic] protocols, test questions and answers that will not be disclosed. While OAR 581-021-0280 provides that the District may not charge a fee to search for or to retrieve education records, **your request is broader than education records**. There was no fee charged for the copy of education records sent to you on November 8, 2004. The \$130.00 fee being requested is for a public records request for documents that are not education records. Please remit the deposit of \$130.00, to begin the review for compilation of other information you requested. The district is estimating that this review and compilation will require approximately 20 hours at \$32.42 per hour for an estimated total cost of \$648.37.

As explained in our previous letters, the Parent has a right under FEPPRA to inspect and review the Student's "education records," which includes "speech logs," test data and the Parent's correspondence that is directly related to the Student regardless of where it is maintained by the District or its service providers. See our December 28, 2005, letter at pages 4 – 7 and 8-9. Indeed, FERPA provides:

No funds shall be made available under any applicable program to any educational agency or institution which has a policy or denying, or which effectively prevents, the parents of students ... the right to inspect and review the education records of their children.

20 U.S.C. § 1232g(a)(1)(A); 34 CFR Part 99, Subpart B. Under § 99.10 of the FERPA regulations, a parent does not have a right to a copy of education records unless circumstances effectively prevent the parent from exercising the right to inspect and review the records, such as if the parent does not live within commuting distance. If the institution does provide a copy of education records, it may charge a reasonable copying fee unless the imposition of a fee effectively prevents a parent from exercising the right to inspect and review the records. 34 CFR § 99.11(a). An institution may not, however, charge a fee to search for or to retrieve the education records of a student. 34 CFR § 99.11(b).

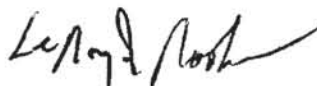
Ms. W[redacted]'s November 2004 letters indicate that the District follows a local or Statewide policy under which it denies parents access to certain records that are considered "education records" under FERPA and charges a fee under the State open records law to retrieve records that should

be made available for inspection and review without charge under FERPA. In order to complete our investigation of this matter, we ask that you respond to these allegations and provide the following information:

1. Identify specifically all information and records that the District refused to allow the Parent to inspect and review under FERPA in response to her October 7, 2004, letter to Ms. W and the reasons for the District's decision.
2. Identify specifically all information and records that the District agreed to provide the Parent under the State open records law.
3. Provide a copy of all local and State statutes, regulations, and policies under which the District refused to allow the Parent to inspect and review the information and records identified above.

Please provide your response within four weeks of your receipt of this letter and refer complaint number 1251 in your correspondence. Thank you for your continued cooperation in this matter.

Sincerely,



LeRoy S. Rooker
Director
Family Policy Compliance Office

Enclosures

cc: Parent

Dr. Susan Castillo, Oregon State Superintendent of Public Instruction
Oregon Department of Education

Dr. Nancy J. Latini, Associate Superintendent
Office of Special Education, Oregon Department of Education

Dr. Alexa Posny, Director
Office of Special Education Programs, US Department of Education