

Report to Board of Education
Parent, Student, and Staff Privacy Expectations Related to Investigations
December 12, 2016

Introduction

Recent events have brought to light concerns about investigations and privacy issues. The following report will review our procedures.

Parents and student have certain privacy expectations regarding their personal information and educational records. Staff have similar expectations regarding their personnel information/records. These privacy expectations must be balanced given the district is a public entity (legally defined as a municipality) subject to the Family Education Rights and Privacy Act (FERPA) and the Kansas Open Records Act (KORA). This report will review FERPA and KORA regarding what information/records can be disclosed and when such disclosure is permissible versus required. Within the context of these privacy expectations, the report will also summarize how investigations are conducted when complaints alleging harassment or discrimination are filed.

Students

Family Education Rights and Privacy Act (FERPA) is a federal law limiting disclosure of personally identifiable information contained in student records to third parties. An “educational record” is information, recorded in any way, directly related to a student that is maintained by the district. Records include, but are not limited to, handwritten and printed materials, computer files, video or audio tapes, pictures, film, microfilm, and microfiche.

Generally, the district is responsible for maintaining the privacy of what is considered “personally identifiable information.” The Kansas Association of School Boards has summarized FERPA requirements in its School Law Handbook. This information includes:

1. Student’s name
2. Parent’s name
3. Student or student’s family’s address
4. Student’s date and place of birth and mother’s maiden name
5. Other information that, alone or in combination, is linked or linkable to a specific student that would allow a reasonable person without personal knowledge of the relevant circumstances to identify the student with reasonable certainty
6. Information requested by a person or entity the district believes knows the identity of the student to whom the record relates

There is, however, an exception. Directory information can be released in accordance with FERPA if the parent or eligible student (student who is 18) has not opted out. Directory information means information contained in an education record that would not generally be considered harmful or an invasion of privacy is disclosed. It includes, but is not limited to the following:

1. Student’s name
2. Address
3. Telephone listing
4. Electronic mail address
5. Photograph

6. Date and place of birth
7. Major field of study
8. Dates of attendance
9. Grade level
10. Enrollment status
11. Participation in activities and/or sports
12. Weight and height of athletics team members
13. Degrees
14. Honors and awards received
15. School attended

It is important to note that while FERPA “allows” the release of directory information, the district will always consider a student’s privacy interests before releasing something that would be considered an “invasion of privacy.”

Staff

It is commonly accepted that personnel matters are confidential. However, that general understanding and practice must be balanced with the district’s obligations pursuant to the Kansas Open Records Act (KORA) and Kansas Open Meetings Act (KOMA).

The Open Records Act provides that records are generally open to the public, except when there is a specified exception. One of the primary exceptions is “personnel records.” This exception states that “personal records, performance rating or individually identifiable records pertaining to employees or applicants for employment, except that this exemption shall not apply to the names, positions, salaries or actual compensation employment contracts or employment-related contracts or agreements and lengths of service of officers and employees of public agencies once they are employed as such.” K.S.A. 45-221(a)(4). The purpose of this exception is to protect the privacy of public employees just as private employers protect their employees.

Similarly, there is an exception in KOMA which allows public bodies to go into executive session to discuss personnel matters of non-elected personnel so as not to invade the privacy of those discussed. The district values its employees and strives to protect their privacy within the parameters of the law. As such, the district makes its best efforts not to release personally identifiable information except as required by the law.

Investigation Procedures

The board has adopted policies to protect students and staff from discrimination and harassment among other things. Buildings also have rules students are expected to follow to ensure a safe and educationally productive environment. When a building administrator and/or the human resources office receives notification (complaint) of a situation that allegedly violates board policy or building rules, an investigation ensues to determine what has or has not occurred. Once facts have been gathered, appropriate action can be taken to ensure those affected are free from future problems and all policies and rules are followed going forward. The action taken depends on the facts and the severity of the situation and is determined on a case-by-case basis. The initial investigation is similar whether the matter involves a student or staff.

After receiving a report or becoming aware of a situation, administration conducts an initial interview with the affected parties. Additional people will be interviewed, as necessary, to gather all relevant facts. When students are involved, the initial interviews are generally done

by building administration and parents are not notified. Of course, the severity and nature of the allegation will dictate the investigation protocol used. Initial interviews are to determine if an event occurred and who was involved. If it is a more serious matter, parents are involved more quickly.

When issues related to staff are brought to our attention, a similar process occurs. Building, and possibly central office administrators, begin an investigation by interviewing students or staff about the allegations to determine what happened, who was involved, and when the event occurred. Additional interviews or fact gathering may be necessary and how that proceeds is dependent upon what is found in the initial interviews. If deemed appropriate to ensure the safety of students or staff or facilitate the investigation, the staff member is placed on administrative leave. During the course of the investigation, the staff person will be interviewed and depending on the facts of each case, it may be appropriate for the staff person to be given the option of resigning. Generally, the district allows a resignation if requested.

Students are entitled to both informal (short-term suspension) and formal (long-term suspension or expulsion) due process depending on the type of consequence imposed. Informal due process includes notice of the allegation and an opportunity to be heard on the issue. Formal due process includes the rights to representation, a hearing, witnesses, etc.

Staff are also entitled to representation in employment matters and certified staff may be subject to the district's administrative due process rights depending upon the employment action taken by the board.

Regardless of whether it is a student or staff matter, privacy is important.