

KANSAS STATE DEPARTMENT OF EDUCATION
SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT
FILED AGAINST
UNIFIED SCHOOL DISTRICT #229
ON AUGUST 8, 2023

DATE OF REPORT AUGUST 16, 2023

This report is in response to a complaint filed with our office on behalf of ----- by his father, ----- . In the remainder of the report, ----- will be referred to as "the student." ----- will be referred to as "the father," "the parent," or "the complainant." ----- will be referred to as "the mother." Together, ----- and ----- will be referred to as "the parents."

The complaint is against USD #229, Blue Valley Public Schools. In the remainder of the report, the "school," the "district," and the "local education agency" (LEA) shall refer to USD #229.

The Kansas State Department of Education (KSDE) allows for a 30-day timeline to investigate a child complaint and a complaint is considered to be filed on the date it is delivered to both the KSDE and to the school district. In this case, the KSDE initially received the complaint on August 8, 2023, and the issuance of this report ended the complaint investigation.

Investigation of Complaint

Gwen Beegle, Complaint Investigator, contacted the parent by phone on August 9, 2023 to clarify the issues in the complaint. The concern raised on the written complaint was that the district did not provide Prior Written Notice (PWN) upon refusal of an oral request for a meeting to discuss "regression from the summer ESY [Extended School Year]" and that the district intended to have only one IEP meeting during the school year.

During the collection of evidence, a second concern was raised by the parent, which pertained to the teaching goals of the student's ESY program. This concern was previously investigated and will not be investigated again. An additional concern regarding the availability of information about the members of the IEP team for the 2023-24 school year was raised by the parent. Regular ongoing communication between the parties is not an issue to be investigated under the provisions of IDEA.

Gwen Beegle interviewed Mark Schmidt USD #229 Assistant Superintendent of Special Education on August 9, 2023. The complaint investigator also received emails from the parent and USD #229 between August 9, 2023 and August 14, 2023. Because some of these include the parties in addition to the complaint investigator, these emails are listed in the evidence list below.

In completing this investigation, the complaint investigator reviewed documentation provided by the complainant and district. Although additional documentation was provided and reviewed, the following materials were used as the basis of the findings and conclusions of the investigation:

- Blue Valley USD #229 School Calendar, 2023-24 School year
- Email thread with the heading: Visitation about meeting on behalf of the ESY regression report (3 emails)
 - Email from the parent to Mark Schmidt, Cindy Ray, Loren Gore, Mark Ward and Crista Grimwood dated July 19, 2023 at 12:21 p.m.
 - Email from Mark Schmidt to the parent, Cindy Ray, Loren Gore, Mark Ward and Crista Grimwood dated July 19, 2023 at 12:32 p.m.
 - Email from the parent to Mark Schmidt, Cindy Ray, Loren Gore, Mark Ward and Crista Grimwood dated July 19, 2023 at 12:34 p.m.
- Email thread with the heading: Response to your phone message
 - Email from Mark Schmidt to the parent and Kristen Venable dated August 4, 2023 at 12:48 p.m.
- Email thread with the heading: New school year (6 emails)
 - Email from Kristen Venable to the parent dated August 7, 2023 at 2:18 p.m.
 - Email from the parent to Kristen Venable, Mark Schmidt, Nancy Thomas, Tonya Merrigan and Crista Grimwood dated August 7, 2023 at 2:35 p.m.
 - Email from Mark Schmidt to the parent dated August 7, 2023 at 3:41 p.m.
 - Email from the parent to Mark Schmidt, Kristen Venable, Tonya Merrigan and Crista Grimwood dated August 7, 2023 at 4:04 p.m.
 - Email from Mark Schmidt to the Investigator dated August 9, 2023 at 10:04 p.m.
 - Email from Mark Schmidt to the Investigator dated August 10, 2023 at 10:23 a.m.
- Email from Mark Schmidt to the Investigator dated August 10, 2023 at 3:17 p.m.
- Email from Kristen Venable to the parents, Carol Lujano (School Psychologist), Margaret Barilleaux (Case Manager and Resource Teacher), and Samantha Lovgren-Urbe (Speech Language Therapist) dated August 14, 2023 at 8:30 a.m.

Background Information

This investigation involves an eight-year-old male student currently enrolled in the second grade at Indian Valley Elementary School in USD #229. The student was initially found eligible for special education and related services at the age of three under the exceptionality category of Developmental Delay on October 6, 2017 while attending preschool at Oak Hill Elementary School in USD #229. His initial IEP provided specialized instruction, occupational therapy (OT), speech therapy, and language therapy. He transitioned to grade school at Indian Valley Elementary School in August 2020 and USD #229 has continued to provide specialized instruction and related services as required by his IEPs through the current date. His most current reevaluation was

conducted on April 20, 2023 and it was determined that the student continues to meet the eligibility criteria for the exceptionality category of Speech/Language Disorder. The student attended the district's Extended School Year (ESY) program during June, 2023.

Issues

The Individuals with Disabilities Education Act (IDEA) and Kansas Special Education for Exceptional Children Act give KSDE jurisdiction to investigate allegations of noncompliance with special education laws that occurred not more than one year from the date the complaint is received by KSDE (34 C.F.R. 300.153(c); K.A.R. 91-40-51(b)(1)).

Based upon the written complaint and an interview, the parent raised one issue that was investigated.

Issue One

The USD #229, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide prior written notice for refusing to hold an IEP meeting at the request of the parent.

Positions of the Parties

The parent reported that he requested a meeting to discuss the reporting on the student's lack of progress resulting from the student's attendance at ESY during June, 2023. He reported that he asked for the meeting during a phone call on July 19, 2023 with Dr. Mark Schmidt, Assistant Superintendent Special Education, Blue Valley USD #229. The parent alleged that his request for a meeting to discuss the student's regression during ESY was denied, and he was told the district would meet with him only one time annually, as required by law.

The district acknowledged that the parent had requested a meeting and further stated that the district had contacted the parent to schedule the meeting during the opening weeks of the school year. Additionally, the district stated: "The district has 15 school days to respond to this request. School will not return to session until August 16, 2023 with the 15th school day landing on September 6, 2023 (BV Calendar Attached). The principal has already emailed Mr. Molina and told him they will meet prior to Labor Day (September 4th)."

Findings of the Investigation

The following findings are based upon a review of documentation and interviews with the parent and LEA staff in USD #229.

- The 2023 ESY program was held between June 5, 2023 and June 29, 2023. The student attended ESY at Heartland Elementary School. The parent received a progress report after the program ended.

- The parent and the district agreed that the parent called the district on July 19, 2023. The parent reported that he asked for a meeting during that call.
- The district provided an email reply to the parent dated July 19, 2023 asking if the parent was requesting a meeting and if so, the district would respond as required by law.
- The parent and the district agreed that the parent called the district office on August 4, 2023, and left a message for the special education director. The district provided an email dated August 4, 2023 in which the director replied and informed the parent that the meeting would be scheduled by the principal when school was back in session after the summer break.
- The district provided an email that showed that on August 7, 2023, the principal contacted the parent in reply to the request for a meeting. This email (a) acknowledged the request for an IEP meeting, (b) alerted the parent that the district wanted to schedule the requested IEP meeting prior to the Labor Day holiday, (c) stated the names and positions of the school members of the IEP team, (d) informed the parent that the teacher would be available in ParentVue on August 14, 2023, and (e) clarified the methods of communication to be used with the parent for the upcoming school year. Documentation showed that the parent received this email.
- The district provided an email that showed that on August 14, the principal emailed the parents and members of the IEP team offering three possible IEP meeting times between August 30 and September 1, 2023.
- The 2023-24 school calendar for USD #229 showed that the first day of the fall school term for teachers and students is August 16, 2023.
- It is the district's practice to respond to parent requests for special education actions within 15 days, taking the school calendar into account.

Applicable Regulations and Conclusions

Federal regulations at 34 CFR § 300.503(a)(2) specify that a Prior Written Notice is to be provided to parents for certain proposed special education actions.

According to federal regulations at 34 CFR § 300.503(a)(2) and K.S.A 72-3430(b)(2) a procedural safeguard afforded to parents is the Prior Written Notice for certain proposed special education actions. The Prior Written Notice documents a description of the action proposed or refused by the district. It is required when the district proposes to initiate or change or refuses to initiate or change the identification, evaluation, placement, or provision of FAPE to a child. This requirement is triggered regardless of whether it is the school or the parent who is initiating the request.

Parents are members of any group that makes decisions on the placement and education of their child (KS 72-330(b)(7) and the student's IEP team is required to review their IEP periodically, "but not less than annually to determine whether the annual goals for the child are being achieved and revise the IEP as appropriate." The IEP can be revised to address a lack of expected progress

toward annual goals or progress in the general education curriculum, the results of evaluation, information about the child provided by the parents, the child's anticipated needs or other matters (KS 72-329(f)).

In this case, the parent requested a meeting to discuss the child's progress as reported in a progress report provided after the child's summer ESY attendance. There are two instances of this request by phone on July 19, 2023 and August 4, 2023. In an email response to the call on July 19, 2023, the district sought to clarify if the parent wanted a meeting. On August 4, 2024 when it was clear to the district that the parent requested a meeting, the district responded by email that the request had been received and that the meeting would be set up after the beginning of the 2023-24 school year (August 16, 2023).

On August 7, 2023 (within one business day of the August 4, 2023 phone call), the principal emailed the parent to state that an IEP meeting would be held within 13 business days (before Labor Day). On August 14, 2023 (within 5 business days), the principal emailed the parent to offer 3 possible meeting dates, all occurring before Labor Day.

Therefore, it is found that the district did not refuse a meeting request by the parent. The district communicated to the parent in a reasonable period of time that it intended to schedule a meeting when school staff would be available. Additionally, the district proceeded to schedule an IEP team meeting as quickly as was practical under the school calendar restraints. No prior written notice of the district's beginning or refusing to begin a special education action specified under 34 CFR § 300.503(a)(2) and K.S.A 72-3430(b)(2) is required in this instance.

Based on the foregoing, according to IDEA and Kansas special education regulations, it is *not* substantiated that the district failed to provide prior written notice for refusing to hold an IEP meeting at the request of the parent.

Investigator

Gwen P. Beegle, Ph.D.

Gwen P. Beegle, Complaint Investigator

Right to Appeal

Either party may appeal the findings or conclusions in this report by filing a written notice of appeal with the State Commissioner of Education, ATTN: Special Education and Title Services, Landon State Office Building, 900 SW Jackson Street, Suite 620, Topeka, KS 66612-1212. The notice of appeal may also be filed by email to formalcomplaints@ksde.org The notice of appeal must be delivered 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).

K.A.R. 91-40-51(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)