

KANSAS STATE DEPARTMENT OF EDUCATION
SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT
FILED AGAINST
UNIFIED SCHOOL DISTRICT #233
ON JULY 18, 2023

DATE OF REPORT AUGUST 21, 2023

This report is in response to a complaint filed with our office by ----- on behalf of her son, ----
----- . For the remainder of this report, ----- will be referred to as "the student-----"
will be referred to as "the parent."

Investigation of Complaint

On July 20 and 31 and August 8 and 11, 2023, the complaint investigator spoke via telephone with Deb Chappell, Assistant Director of Special Services for USD #233. On August 4, 2023, the investigator spoke by conference call with the assistant director and with Andy Heinicke, Special Services Coordinator. The investigator spoke by telephone with the parent on July 28 and August 16, 2023.

In completing this investigation, the complaint investigator reviewed the following materials:

- Prior Written Notice for Evaluation or Reevaluation and Request for Consent dated December 7, 2019
- Notice of Meeting dated January 8, 2019
- Evaluation Report dated January 24, 2019
- Basis for Eligibility Determination (Autism) dated January 24, 2019
- Basis for Eligibility Determination (Developmental Delay) dated January 24, 2019
- Prior Written Notice for Identification Initial Services, Placement, Change in Services, Change of Placement, and Request for Consent dated January 24, 2019
- Notice of Meeting dated January 29, 2019
- Evaluation Report dated March 7, 2019
- Basis for Eligibility Determination (Autism) dated March 7, 2019
- Basis for Eligibility Determination (Developmental Delay) dated March 7, 2019
- IEP for student dated March 7, 2019
- Prior Written Notice for Identification Initial Services, Placement, and Change in Services, Change of Placement, and Request for Consent dated March 7, 2019
- Notice of Meeting dated April 8, 2019
- IEP Amendment for the student dated April 8, 2019
- Prior Witten Notice for Identification Initial Services, Placement, Change in Services, Change of Placement, and Request for Consent dated April 8, 2019
- Meeting Notes dated April 12, 2019

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- Notice of Meeting dated January 8, 2020
- IEP Amendment for the student dated January 9, 2020
- Prior Written Notice for Identification Initial Services, Placement, Change in Services, Change of Placement, and Request for Consent dated January 8, 2020
- Notice of Meeting dated January 21, 2020
- Prior Written Notice for Identification Initial Services, Placement, Change in Services, Change of Placement, and Request for Consent dated February 12, 2020
- IEP for the student dated February 12, 2020
- Prior Written Notice Consent to Amend IEP without Team Meeting dated September 10, 2020
- Notice of Meeting dated December 18, 2020
- IEP for the student dated January 21, 2021
- Prior Written Notice for Identification Initial Services, Placement, Change in Services, Change of Placement, and Request for Consent dated January 21, 2021
- Evaluation or Reevaluation and Request for Consent dated November 5, 2021
- Notice of Meeting dated December 8, 2021
- IEP for the student dated January 12, 2022
- Prior Written Notice for Identification Initial Services, Placement, Change in Services, Change of Placement, and Request for Consent dated January 12, 2022
- Email dated August 10, 2022 from the parent to the classroom teacher
- Email dated August 12, 2022 from the parent to the classroom teacher
- Email dated August 18, 2022 from the classroom teacher to the parent
- Email dated August 24, 2022 from the classroom teacher to the parent
- Email dated August 27, 2022 from the parent to the classroom teacher
- Email dated September 28, 2022 from the classroom teacher to the parent
- Email exchange dated October 2, 2022 between the parent and the building principal
- Email dated October 10, 2022 from the speech/language pathologist to the classroom teacher
- Email dated October 20, 2022 from the classroom teacher to the parent
- Email dated October 21, 2022 from the parent to the classroom teacher
- Email dated October 23, 2022 from the parent to the classroom teacher
- Email dated October 26, 2022 from the classroom teacher to the parent
- Email dated October 28, 2022 from the parent to the classroom teacher
- Email dated November 9, 2022 from the classroom teacher to the parent
- Notice of Meeting dated December 1, 2022
- IEP for the student dated December 5, 2022
- Prior Written Notice for Identification Initial Services, Placement, Change in Services, Changes of Placement, and Request for Consent dated December 5, 2022
- Email dated March 23, 2023 from the parent to the classroom teacher
- Email dated March 24, 2023 from the parent to the classroom teacher
- Email dated April 11, 2023 from the resource teacher to the parent
- Email dated April 20, 2023 from the speech/language pathologist to the parent
- Email dated April 20, 2023 from the parent to the speech/language pathologist

- Email dated April 21, 2023 from the speech/language pathologist to the parent
- Prior Written Notice for Evaluation or Reevaluation and Request for Consent dated May 2, 2023
- Contact logs for the speech/language pathologist covering the period of October 2, 2022 through April 20, 2023
- IEP Progress Reports for the period of May 2022 through May 2023
- 150 pages of emails provided by the parent covering the period of August 10, 2022 through the end of the 2022-23 school year; those considered most relevant to the issues identified in this complaint have been included in the above listing.
- Olathe Public Schools Special Services Study with areas highlighted by the parent

Background Information

This investigation involves a 7-year old boy who will enter the second grade in his neighborhood school at the start of the 2023-24 school year. The student was initially placed in foster care with the parent after being dismissed from the NICU (Neonatal Intensive Care Unit) at 10 days of age. The student's biological parents relinquished their rights to the student on January 26, 2017, and the student was adopted by the parent at age 4.

The parent was concerned about the student's lack of eye contact with her and pursued an evaluation of the student at approximately 18 months. The student was seen at Children's Mercy Hospital's Neurodevelopmental Clinic on July 20, 2017 and was diagnosed with Early Atypical Autism Disorder. The student began attending his grandmother's in-home preschool where he received ABA therapy from Autism Services of Kansas for 25-30 hours per week.

The student received in-home services from Infant Toddler Services of Johnson County beginning in March 2017 to address communication and social/behavioral concerns.

The student was again seen by Children's Mercy Hospital's Neurodevelopmental Clinic on January 18, 2018 and was diagnosed with Autism Spectrum Disorder without global developmental delay and an expressive language delay.

A diagnosis of Neurofibromatosis Type 1 (NF1) was confirmed by genetic testing on June 9, 2018.

The student was referred for evaluation by USD #233 to prepare for a possible transition to Early Childhood services. The evaluation took place in January 2019 while the student attended an Early Childhood Special Education classroom in a district program for 4 mornings per week for 3 weeks. Evaluation data indicated that he did not meet eligibility criteria for early childhood special education or speech/language services at that time. Eligibility determination reports provided by the district show that the student did not meet disability criteria for either Developmental Delay or Autism. Neither the parent nor the student's educational advocate agreed with the team's decision.

On January 28, 2019, the educational advocate provided consent for additional evaluation of the student. The team's initial eligibility decision was revisited on March 7, 2019, and the student was

determined to be eligible for special education services under the exceptionality of Developmental Delay. While the district recommended services 5 days per week, the parent opted to access services for 3 days a week, delaying the initiation of services until the beginning of the next school year in August of 2019. The student continued to participate in the grandparent's in-home preschool program for the other 2 days each week. Services were increased to 5 days per week as of January 9, 2020.

At an annual IEP team meeting on February 12, 2020, the team determined that the student should participate in the district's TIPPS (Teaching Intensive Programming and Play Skills) program for extended school year (ESY). The team determined that the student's needs could be met in the ECSE (Early Childhood Special Education) classroom for the 2020-21 school year.

The student's IEP was amended in September 2020. The student was provided with 2 days per week of in-person learning and 2 days per week of remote learning due to COVID-19.

At the Kindergarten level, beginning in August of 2021, 20 minutes of special education services were provided to the student twice per week in the general education classroom at his neighborhood school. Special education services were reduced to once a week for 15 minutes at the annual IEP review for the student on January 12, 2022.

The student's IEP was reviewed and revised on December 5, 2022. Special education services for the student were reduced to 15 minutes of consultative support once a month for 15 minutes.

The student experienced episodes of wetting and soiling during the first part of the 2022-23 school year, but those episodes had reduced significantly by the time of the annual IEP review in December of 2022. At the start of the second semester, a change was made in the instructional patterns for the student's school day. Rather than having a homeroom teacher who provided instruction in all core content, first grade students at the school began receiving reading instruction from one first grade teacher, math instruction from another, and other core content instruction from a third teacher. Additionally, the first-grade students were preparing for a presentation to be given in another city.

The parent reports that the student's behavior became more challenging beginning in January 2023. The student was unwilling to complete classwork for teachers who were not his homeroom teacher, and he began missing recess to complete assignments. Soiling episodes increased. The incidence of inappropriate behavior escalated.

On April 12, 2023, the parent sent an email to district staff stating:

"...We are requesting a full comprehensive evaluation at this time so the team can write a robust iep that allows for [the student] to make meaningful progress in light of his circumstances and addresses his skill deficiencies with the modifications and accommodations necessary for his meaningful student engagement."

The parent had the student privately evaluated by an outside agency and shared the results of that evaluation with the school team in a meeting on April 26, 2023, having already submitted a request

on April 12, 2023 for a full comprehensive evaluation of the student with a follow-up written request on April 20, 2023. At the meeting, the parent shared her concerns regarding the student's social skills, social language, academic performance, and motor/sensory needs. The team determined that the district should conduct a reevaluation of the student. The parent provided her written consent for the reevaluation on May 2, 2023.

Issues

In her written complaint, the parent raised a number of additional issues in addition to her stated initial concern. After speaking with the parent on July 28, 2023, the investigator developed a proposed list of nine issues to be addressed as a part of this investigation. That proposed list was sent to the parent via email for approval on July 28, 2023.

During the July 28, 2023 telephone call with the investigator, the parent raised an additional issue. On July 31, 2023, the investigator shared that new issue with the Assistant Director of Special Education for the district who agreed to the inclusion of that new issue in this complaint.

Once the revised issues were approved by the parent, the district was notified. The parent's complaint as revised contains a total of ten issues.

Applicable Statutes and Regulations

A formal complaint must allege that a violation of special education laws or regulations has occurred during the 12-month period prior to the date that the complaint is received by the commissioner of education (K.A.R. 91-40-51(a) and (b)). As will be noted below, the investigator determined during the course of this investigation that some of the issues raised by the parent in her complaint alleged violations which occurred outside of the 12-month period prior to July 18, 2023 and thus were not investigated further.

Issue One

The district changed the student's eligibility without the consent of the parent.

Parent's Position

It is the position of the parent that the district had, without her knowledge or consent, changed the disability category under which the student had been determined eligible for special education service from "Autism" to "Developmental Delay."

District's Position

It is the district's position that no change has been made to the student's disability designation since the student was initially determined eligible to receive special education services in March 2019 under the disability category of Developmental Delay.

Applicable Statutes and Regulations

When making an eligibility determination, an IEP team must ensure (1) that the child meets the definition of one of the categories of exceptionality and, (2) as a result of that exceptionality, needs special education and related services (KAR 91-40-1(k)(w); 34 CFR 300.8).

Kansas regulations, at K.A.R. 91-40-10(a)(1)(A), require that the evaluation report include a statement as to whether the child has an exceptionality. These regulations do not require that the evaluation report include the particular category of exceptionality in which a child has been identified. However, no information should be withheld from parents. It is important that parents be informed of the particular category of exceptionality in which eligibility for special education was determined, and which is reported by the school to the state through the Management Information System (MIS).

There is no requirement in special education statutes and regulations which requires that the parent provide written consent for a change to the disability category under which a child is determine eligible to receive special education services.

Once a child is identified as a child with a disability, determination of services to be provided are based on the child's needs, functional performance, and the impact of the exceptionality on the child's ability to access and progress in the general education curriculum – not on the child's disability category.

At K.A.R. 91-40-1(f), Kansas regulations define "Autism" as a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three but not necessarily so, that adversely affects a child's educational performance.

At K.A.R. 91-40-1(q), Kansas regulations define "Developmental Delay" for children age 9 and younger as a deviation from average development in one or more of the following developmental areas to the degree that special education and related services are required:

- (A) Physical;
- (B) cognitive;
- (C) adaptive behavior;
- (D) communication; or,
- (E) social or emotional development.

Investigative Findings

The student was initially determined to be eligible for special education services on March 7, 2019 under the category of Developmental Delay. Eligibility under the categorical designation of Autism was considered at the time, but it was determined that the student did not meet the criteria for eligibility under that disability. The student had been considered for eligibility under both categories in January 2019 but had not been considered eligible under either category at that time. Both the parent and the educational advocate were members of the March 7, 2019

multidisciplinary evaluation team and signed the evaluation report showing that they agreed to the determination of the student's eligibility under the disability category of Developmental Delay.

No evidence was provided by either party to show that the student's eligibility was considered again until a reevaluation was completed in January of 2022.

A triennial reevaluation of the student was completed in January of 2022. According to the prior written notice and consent form signed by the parent on January 12, 2022, the district "proposed to implement an IEP for [the student] beginning 01/12/22 with the exceptionality of Developmental Delay" – the same disability category under which his eligibility had originally been established.

No evidence was provided to show that any changes to the student's disability category have been made since January 2022.

In an email to the parent dated April 11, 2023, the resource teacher wrote:

"When looking back at the documents that I had sent, during [the student's] initial evaluation in March 2019, his eligibility was under Developmental Delay. The eligibility document stated that the disability criteria for autism was not met. Since then, his eligibility has been Developmental Delay."

Summary and Conclusions

The educational advocate for the student and the parent were members of the multidisciplinary evaluation team that completed the student's initial evaluation in January 2019 when it was determined that the student was not eligible for special education services.

According to a March 7, 2019 evaluation report, both the parent and the advocate were members of the multidisciplinary team that reconsidered the student's eligibility. Both the parent and the advocate signed the evaluation report to show that they agreed with the team's findings of eligibility for the student under the category of Developmental Delay. While special education statutes and regulations do not require districts to inform the parent of the disability category under which a student has been determined to be eligible for special education services, the evaluation report for this student did identify his eligibility category (Developmental Delay).

There is no requirement in special education statutes and regulations that parents provide written consent for a change to their child's disability designation. However, in the case of this student, no evidence was provided to show that the student's disability category was changed at any time prior to January 12, 2022 when – following a reevaluation – the student was again determined to be eligible for special education services under the category of Developmental Delay. The parent was at that time provided with prior written notice that included the disability category designation for the student and gave written consent for the student to continue to receive special education services. No evidence was provided to show that any change has been made to the student's disability category since January 2022.

A violation of special education statutes and regulations is *not* substantiated on this issue.

Issue Two

The district failed to complete a thorough OT (Occupational Therapy) evaluation of the student.

Parent's Position

The parent asserts that the district did not conduct a thorough OT assessment when the parent informed the district that the student had been diagnosed with Autism, and the district did not assess his sensory needs. According to the parent, the district did not consider the student eligible for OT services even though the student had poor handwriting and spatial awareness issues.

District's Position

It is the position of the district that while the parent and the education decision-maker did not agree with the student's initial evaluation on January 24, 2019, (which did not include an OT evaluation), they did agree with the findings of two subsequent evaluations on March 7, 2019 and January 12, 2022, both of which included OT evaluations. The district asserts that until the filing of this complaint, the parent had not expressed dissatisfaction with the OT portions of those evaluations.

The district states that, on May 2, 2023, the parent gave her written consent for a reevaluation of the student that includes an evaluation of the student's motor abilities based on new and existing data. That reevaluation is ongoing. The district is open to convening a meeting with the parent to discuss her specific requests regarding that component of the reevaluation.

Applicable Statutes and Regulations

At K.S.A. 72-3428(h)(1), Kansas statutes establish guidelines for the reevaluation of each exceptional child. A reevaluation should be conducted if the school determines that the educational or related services needs of the child, including academic achievement or functional performance, warrant a reevaluation or if the child's parent or teacher requests a reevaluation. The school should conduct a reevaluation of a child not more frequently than once a year, unless the parent and the agency agree otherwise; and at least once every three years, unless the parent and the agency agree that a reevaluation is unnecessary.

Investigative Findings

The initial special education evaluation of the student by the district was completed in January 2019. The student's OT needs were not assessed during that time, but motor needs were assessed during a reassessment completed in March 2019. Both the parent and the student's education advocate provided written consent for the reevaluation. At the time of the triennial reevaluation completed in January 2022, the parent gave written consent for the assessment of the student's motor skills to be completed using existing data.

All these evaluations/reevaluations were completed more than 12 months prior to the date this complaint was received.

According to the parent, the student's classroom teacher sent the parent an email on September 28, 2022 writing:

"I talked with [the building principal] today about [the student] and his IEP. He does not currently have OT support or goals written in his IEP, however, I am going to request that the OT teacher come and observe [the student] a few times in different settings and give me support, strategies, and ideas that can help [the student] with his handwriting and other small motor skills. I will let you know at conferences where we are with this."

The parent responded via email stating:

"Last year they said he did not qualify for OT, but I personally think he needs help. They mentioned they had a 'group fine motor table' and that might benefit from that if his writing started to decline. He has low muscle tone and he hurries through fine motor tasks because it's hard for him."

No evidence was provided by the parent to show that either she or the classroom teacher requested a reevaluation of the student's motor skills prior to April of 2023 when the parent submitted a written request for the reevaluation of the student. The parent provided written consent for a reevaluation on May 2, 2023. That reevaluation is currently in progress. The district will have 60 school days from the date parental consent was received to complete the reevaluation.

Summary and Conclusions

While the parent and the classroom teacher did have an email exchange regarding the student's motor needs in September 2022, no evidence was provided by the parent to show that either she or the student's classroom teacher specifically requested a special education reevaluation of the student's OT needs prior to April 2023. The parent provided written consent for a full reevaluation of the student which included a reassessment of his motor skills on May 2, 2023. That evaluation will be completed during the 2023-24 school year.

Two previous reevaluations were conducted more than 12 months prior to the receipt of this complaint, and the current reevaluation has not yet been completed. Under these circumstances, this issue was not investigated further, and a violation of special education statutes and regulations is *not* substantiated on this issue.

Issue Three

The student was provided with speech services without the notice and consent of the parent.

Parent's Position

The parent asserts that, following a team meeting in April 2023, the speech/language pathologist (SLP) told the parent that she would be sending home work sheets the parent could use over the summer. According to the parent, the SLP stated that the work sheets would allow the student to continue to work on the articulation skills he had been developing when working with the

pathologist in a small group during the school year. The parent contends that she had never given consent for the pathologist to work with the student and was unaware that the pathologist was seeing the student.

District's Position

It is the position of the district that the SLP has not provided any direct special education services to the student. According to the district, the SLP's only contact time with the student was for two informal observations in October 2022 which the parent had requested and agreed to.

The district asserts that the SLP spoke with the parent on April 18, 2023 about having the student participate in a short-term general education intervention group. While, according to the district, the parent initially agreed to the intervention, the parent subsequently notified the SLP that she did not want the student to participate in the intervention group, therefore, no general education interventions were provided.

Applicable Statutes and Regulations

For children in kindergarten through age 21, Kansas screening laws require that schools utilize observations, instruments, measures, and techniques that disclose any potential exceptionality or a need for a special education evaluation.

Collaboration between special education and general education staff is an important part of the general education intervention process. Because child find is required by special education law, and GEI (General Education Intervention) is Kansas' method of conducting child find for school age children, it is expected that special educators will, in part, support carrying out GEI.

Federal requirements indicate that the screening of a student to determine appropriate instructional strategies for curriculum implementation shall not be considered to be an evaluation for eligibility for special education and related services (34 C.F.R. 300.302). Further explanation in comments to the federal regulations indicates that screening refers to a process that a teacher or specialist uses to determine appropriate instructional strategies. The comments go on to describe screening as typically being a relatively simple and quick process that could include such activities as the observation of children in various environments.

The difference between screening and evaluation is the intent of the activities. If the intent of the activities is to determine instructional strategies or interventions to be used by staff in a general education setting, that constitutes screening. If the intent changes to determine if the student is a child with an exceptionality, or if the student needs special education, that is evaluation and all due process protections come into play. At that point, parents must be contacted to seek consent for evaluation.

Investigative Findings

On October 2, 2022, the SLP was copied on an email from the school principal to the parent regarding concerns that had been voiced by the parent about the student's motor and speech skills. The principal wrote:

"Finally, I wanted to address the piece related to articulation and phonological awareness. Our curriculum supports phonological awareness through what is called the 95% curriculum. I know that [the classroom teacher] will share with you [the student's] abilities in this area during conferences. As for the articulation possibility, I am happy to have one of my Speech Language Pathologists peek in on him to see if they feel there is any need for concern. Again, if you are okay with that, just let me know. Having an SLP or PT check in on [the student] is not a formal evaluation, just a check."

The building principal received an email from the parent on October 2, 2022 stating:

"I would be happy for him to be checked out by OT, PT and speech. His N1F1 condition has many impacts on his life. He will always have low muscle tone and learning disabilities. I am glad he is on an IEP so when [the classroom teacher] or [the special education case manager] see breakdowns we can repair it before he gets behind. He will have an IQ test this March that will give better specifics of what areas are causing the breakdown, whether it be working memory, alternating attention or initiating. I am certain [the classroom teacher] will also let me know if she noticed any areas to grow in. So hopefully that assessment will also help create supportive goals for his success long term."

According to a statement from the SLP, she emailed the classroom teacher asking whether the teacher had specific concerns about the student's articulation skills and followed up with the teacher in person. According to the SLP, the classroom teacher did not at that time identify any specific speech/language concerns but reported that the request for consultation was initiated by the parent.

The SLP completed two informal observations of the student. For the first observation on October 6, 2022, the student joined an already existing speech group in the speech room so the SLP could observe speech/language abilities within a structured activity with peers. For the second observation on October 10, 2022, the student was seen in the speech room for informal observation of articulation skills. According to the SLP, the purpose of the observations was to look at overall speech/language abilities at a baseline level. The SLP provided the classroom teacher with the following statement to be shared with the parent during parent/teacher conferences later in October 2022:

"Overall [the student] has good speech intelligibility. The two sounds he exhibits difficulty with are with /r, th/ sounds. He was able to correctly imitate the /th/ sound at the beginning of words when I prompted him to get his tongue between his teeth and then model the word for him. The /r/ sound was harder and he was not able to get correct production with this same support. At this time, I would suggest to continue to give him more time to develop in his speech. It is okay to

cue and prompt for sounds (for /r/ we talk about pulling the tongue back and for /th/ getting the tongue tip between his teeth). I would like to check in on him mid-April and see where he is at. If he continues to really struggle, I'll start some interventions with him at the end of first grade to give him a little extra support and recheck him in second grade.

In regard to other speech/language areas, everything looked good. He easily engaged with me and the peers in his group. He had good eye contact and body orientation, took turns, provided relevant responses, and engaged with others appropriately. He communicated for different purposes (answered questions, commented on activities/what happening, asked for clarification). He followed directions, demonstrated understanding of instruction, used good vocabulary and concept words in his oral language, and answered different wh-question forms (who, what, when, where, why). Appropriate sentence structure and grammar were observed.

I will keep [the student] on my watch list and see how he is doing come April with speech sounds and go from there. I would be happy to touch base further with parents if need be. If they would like to chat more, call me and I can come to the conference or talk to them after your conference."

The information was shared with the parent by the classroom teacher during conferences. According to the SLP, she did not receive any feedback from the school team or parents, and she conducted no further observations. The SLP stated that she did not provide any intervention or direct support to the student during the ensuing months.

According to the SLP, she began developing general education intervention groups for first-grader student beginning in April 2023. These groups were formed based upon previously-expressed parent/teacher concerns and request for intervention, with parent consent.

The SLP states that she spoke in-person with the parent after school on April 18, 2023 when the parent came to pick up the student. According to the SLP, the parent agreed to the provision of front-end interventions (GEI) for the student in the area of articulation and expressed her concerns regarding the student's social/pragmatic skills. By report of the SLP, the parent expressed concern with the student's interaction during unstructured play (recess time), noting that he tended to play alone. The SLP states that she told the parent that there may be times students prefer to play alone and that observations across multiple settings and different social contexts would aid in gathering information on how the student is interacting and engaging with his peers throughout and across his school day. The SLP states that she told the parent that she could informally observe and monitor language/communication and social/pragmatic skills when the student came for front-end interventions for articulation. According to the SLP, the parent appeared to agree with the provision of the GEI.

On April 18, 2023, the SLP provided the parent with an outline of the referral and intervention process she was proposing for the student. According to the SLP, the parent provided her with copies of previous communication with the school team as background information on the student. The SLP sent an email to the parent on April 20, 2023, writing:

"I appreciate you sharing this information as I begin to work with [the student]. I want to touch base a little further since we last spoke regarding the intervention support I will be providing him. As part of the referral process with students with speech sound errors, I typically start with a general observation and informal assessment of skills following parent or teacher referral. If it is a teacher referral, I receive parent consent prior to seeing the student. [The classroom teacher] had reached out to me back in the fall following parent concerns you had shared with her and from there I pulled [the student] in my room for general observations of overall speech/language skills. The only noted area that showed continued monitoring was with articulation skills of later developing sounds. I followed up with feedback to [the classroom teacher], which she indicated she would share at parent conferences. My feedback was to keep [the student] on my watch list and recheck skills in April. His errors were with later developing sounds (r, th) that I begin to work with students on as they near second grade. I am attaching a speech sound development chart I give families so they can see age level at which typical mastery of sounds is achieved. In my recheck with [the student] this week, he continues to have errors with these later sounds, with primary errors noted with /r/ that are most prevalent in his oral communication. At this time, I am looking at doing informal intervention to work with him on skills and see how he progresses. Some students do not need further intervention besides this informal support to work on skills (4-6 weeks). Others show need for continued intervention with direct instruction, practice, and ongoing corrective feedback. If that is the case, moving forward with formal evaluation is the typical path. The informal intervention allows me to see levels of support students need and progress over time so I can best determine if a home program will then meet needs or if an evaluation is necessary. It's a process to help determine least restrictive environment for students. Informal interventions with [the student] would be for the remainder of this school year, and then when he returns in the fall, I will do a recheck of skills and see where he is at. It is my understanding that you are okay with me to start this informal support for [the student]. Please reach out and we can touch base further if you feel otherwise. If the team decides to move forward with a comprehensive evaluation, then the intervention support would be part of this evaluation process.

I am including other members of the team so we are all aware of the plan and on the same page. Please confirm that you are okay with this plan and reach out if you have questions or would like to touch base further. I will also forward the email I had sent [the classroom teacher] back in the fall so you have the specific feedback from that initial observation.'

The parent responded to the SLP on April 20, 2023, writing:

"...I have not had concerns about [the student's] articulation because his errors are still age appropriate for him...My concerns are more complex than articulation errors that are typical for his age. I am not okay with informal intervention. I want data to be collected and progress reports demonstrating he has generalized his social skills and regulates his emotions independently. I feel a comprehensive evaluation is necessary to establish patient centered goals that build [the student's] participation with peers at school..."

The SLP sent an email to the parent on April 21, 2023, writing:

"I will plan to take [the student] out of the articulation intervention group at this time. You are familiar with cueing and support to help him in this area at home, and I can provide support and reinforce skills at school as he continues to progress in his speech development, if you decide you want to move forward with that level of intervention. Back in the fall, the original purpose of the observation was to look at overall speech/language skills and the area of difficulty I observed was specifically with production of later developing sounds, with recommendation to keep [the student] on monitor and consider an intervention group at a later time.

We spoke briefly regarding social/pragmatic skills earlier this week and we can have further discussion and collaboration on your concerns in this area. I cannot attend the meeting currently scheduled on April 26th due to conflict with a student IEP meeting but can plan to attend further meetings scheduled out.'

According to the SLP, she had no GEI-related contact with the student beyond the October 2022 observations.

Summary and Conclusions

The SLP conducted two screening observations of the student in October 2022 following an email exchange between the parent and the building principal on October 2, 2022 in which the parent agreed to have the student "checked out." In the email exchange, the principal stated that this would not be a "formal evaluation."

The SLP provided the classroom teacher with a summary regarding her observations to be shared with the parent, noting that the SLP would keep the student on a "watch list" for follow up in April 2023.

The SLP followed up with the parent in April 2023 offering to place the student in a group for "front end interventions" (GEI) to address his articulation errors, but the parent stated in an email to the SLP that she was not "okay" with informal interventions and wanted the student to have a comprehensive evaluation. The student's name was removed from the list of students to be included in the GEI group, and no interventions were provided to the student.

No speech/language-related special education services have been provided to the student. A violation of special education statutes and regulations is *not* substantiated on this issue.

Issue Four

The parent's request for the inclusion of visual supports in the student's IEP was denied without prior written notice.

Parent's Position

The parent asserts that she asked to have visual supports included in the student's December 5, 2022 IEP but was told that they weren't needed because the classroom teacher could provide all necessary accommodations. It is the position of the parent that visual supports were removed

when the IEP was revised, but the district did not provide her with prior written notice of that change.

District's Position

It is the position of the district that the team decision to remove the visual support from the student's December 5, 2022 IEP was made with the full participation of the parent. The district denies that any proposal made by the parent to include a visual schedule in the student's IEP was rejected by the team and asserts that no argument or disagreement between the parent and school team regarding this accommodation occurred during the meeting. The district contends that it was the parent who proposed the removal of a visual support (a picture of hand signing letter "R" on his desk) from the student's IEP as it had not proven to be effective, and the school team agreed.

However, the district stipulates that this change to the IEP was not documented explicitly in the Prior Written Notice.

Applicable Statutes and Regulations

Parents must be given prior written notice and must provide written consent before a district can make a material change in special education services being provided to their child (K.S.A. 72-3430(b)6)).

The term "**Material Change in Services**" is defined in Kansas regulation 91-40-1(mm), to mean, "an increase or decrease of 25 percent or more of the duration or frequency of a special education service, related service, or supplementary aid or service specified on the IEP of an exceptional child." Accordingly, a removal or addition of any of these services is a material change in services because either a removal or addition of any of these kinds of services is a 100% change in the frequency and the duration of the service.

The term "**Supplementary Aids and Services**" is defined in Kansas regulation 91-40-1(ttt) to mean, "aids, services, and other supports that are provided in regular education classes, other education-related settings, and extracurricular and nonacademic settings to enable children with disabilities to be educated with nondisabled children to the maximum extent appropriate." This definition encompasses any "accommodations" (a term not used in the IDEA regulations) that are added to an IEP. Thus, a change in the frequency or duration of 25% or more of any of these supplementary aids and services would be a material change in services.

The term "**consent**" is defined in Kansas regulation 91-40-1(l), in relevant part, to mean that "the parent has been fully informed of all information relevant to the activity for which consent is sought..." and the "parent agrees in writing to the carrying out of the activity for which consent is sought and the consent describes that activity..." This regulation makes it clear that when a parent agrees in writing to a material change in services, that agreement amounts to consent only if the parent has been fully informed of all information relevant to the activity for which consent is sought.

The term “prior written notice” (PWN) is not defined by Kansas law, but the law does specify the required content of a PWN. K.S.A. 72-3432 says each PWN must include a description of the action proposed or refused by the agency and an explanation of why the agency proposes or refuses to take the described action. Accordingly, a PWN that does not describe the specific action proposed or refused is deficient, as a matter of law.

Investigative Findings

A “visual schedule” first became a part of the student’s IEP in February of 2020. The schedule was initially used to “assist with his daily routine and non-preferred activities.” For the student’s January 21, 2021 IEP, the visual schedule was provided because the student required “visual supports with his daily routine.”

The “Supplementary Aids and Services (Accommodations and Modifications)” section of the student’s January 12, 2022 IEP states that the student will be provided with a “visual schedule [in his classroom]...to assist with his daily restroom usage...until [the student] is independent with initiating toileting.”

The parent and the resource teacher exchanged emails in early August 2022. In that exchange, the parent stressed the importance of the student’s visual schedule to assist with toileting reminders. On August 10, 2022 the parent wrote, “He does not initiate going potty in new environments, and he will say he does not have to go. So initially he will need direct commands to try to go, and he can get a sticker if he successfully does, then fade out where he looks at his visual aid and asks to go independently.”

The parent states that, at the December 5, 2022 IEP team meeting, she asked to have a visual schedule focusing on toileting include in the student’s IEP, but was told that the teacher could provide cues/reminders for the student so the inclusion of a visual schedule was unnecessary; the visual schedule was removed.

The parent was provided with prior written notice of the district’s proposal to move the student to “indirect special education services...due to his growth in independence with using the restroom.” The notice also states that the district proposed to “update his goals based on his current levels and performance.” However, the prior written notice makes no reference to the removal of an accommodation -- the visual schedule.

Summary and Conclusions

An accommodation of “visual schedule” was first listed in the IEP for the student under “supplementary aids and services” beginning in February 12, 2020 and remained in place under the student’s January 21, 2021 and January 12, 2022 revision. However, when the student’s IEP was revised on December 5, 2022, that accommodation was removed from the student’s IEP.

While the parent was given prior written notice of other changes made to the student’s IEP at that time, the parent was not provided with prior written notice of the removal of this accommodation, and the consent of the parent for this material change to the student’s supplementary aids and

services was not obtained. A violation of special education statutes and regulations *is* substantiated on this issue.

Issue Five

The district failed to provide the parent with progress monitoring reports when the student was in preschool and removed the goals established by the IEP team at that time without explanation when the student was in Kindergarten.

Because this issue alleges violations that occurred more than 12 months prior to the date this complaint was received, the issue was not investigated.

Issue Six

IEP goals have not been met.

Parent's Position

The parent asserts that the student did not meet a number of his annual goals over the years and continues to demonstrate delays in areas that have previously been targeted by those earlier goals.

District's Position

It is the position of the district that the annual goals in the student's IEP were developed as a "projection," not a guarantee of progress. The district asserts that while the central point of the student's IEP goals – appropriate toileting – has remained the same during the 12-month period covered by this complaint, those goals have focused on increasingly enhancing his independence in requesting to leave the classroom to go to the restroom. The district asserts that the student made progress on his goals between January 12, 2021 and December 5, 2022. However, when monitoring showed a lack of progress beginning in January 2023, and after a parent-initiated outside evaluation was completed, the district convened a meeting with the parent to discuss her concerns and the student's lack of progress.

Applicable Statutes and Regulations

A student's IEP shall include a statement of measurable annual goals, including academic and functional goals designed to meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum and meet each of the child's other educational needs that result from the child's disability. The IEP must also include a description of how the child's progress toward meeting the annual goals will be measured and when periodic reports on the progress the child is making toward meeting the annual goals will be provided, such as through the use of quarterly or other periodic reports issued concurrently with general education report cards (K.S.A. 72-3429).

A student's IEP is not a guarantee of progress. The IEP must be reasonably calculated to enable the child to make "progress appropriate in light of the child's circumstances" (*Endrew F. v. Douglas County School District* (137 S. Ct. at 999) and should aim to enable the student to make progress

toward the student's annual IEP goals and in the general education curriculum, but there is no guarantee of progress.

A student's IEP is to be reviewed at least once every 12 months, to determine whether the annual goals for the child are being achieved and to revise the IEP as appropriate. The review and revision of the IEP is to address: (a) any lack of expected progress toward the annual goals and in the general education curriculum, where appropriate; (b) the results of any reevaluation conducted; (c) information about the child provided by the parents; (d) the child's anticipated needs; or (e) other matters. If the student is not making progress or the progress is not sufficient to meet the annual IEP goals and make appropriate progress in the general education curriculum, the IEP team should meet to discuss the lack of progress and consider meeting more frequently than once a year.

Investigative Findings

During the 12-month period covered by this complaint, the student has been provided services under two IEPs, the first dated January 12, 2022 and the second dated December 5, 2022.

The student's January 12, 2022 IEP contains only one goal:

"[The student will raise his hand using the restroom signal and wait for the teacher to grant permission with 1 or less prompts on 4/5 opportunities by 1/11/23.]"

The "Baseline" statement for this goal states:

"When [the student] is told it is time to use the restroom, he complies and gets up and goes. He washes his hands and returns to class without argument. [The student] does not initiate using the bathroom independently."

Benchmarks for attainment of the goal anticipated that the student would shut off a timer, raise his hand using the restroom signal and wait for the teacher to grant permission with 3, then 2, and then 1 prompt by October 7, 2022. It was anticipated that, by December 16, 2022, the student would no longer be using a timer, but with no more than 2 prompts he would signal the teacher appropriately and wait for permission. By January 11, 2022, it was anticipated that the student would need no more than one prompt and no timer.

Progress toward attainment of the student's goal was monitored on May 16, 2022. At that time, the student was making sufficient progress toward attaining his goal (4). According to his IEP Progress Report, he was responding to his timers set 3 times a day and would raise his hand with the bathroom sign and wait for permission to go. He had asked to use the restroom without prompting on 2 occasions during the quarter.

In an email to the student's classroom teacher on August 12, 2022, the parent wrote, "[The student] told me he had three accidents today...This is something that is difficult for him to initiate in new environments with unfamiliar people and can be prevented...He needs to have schedule times to go (a timer on the iPad) and 1-2 opportunities created by the IEP team to attempt initiating to request to go to the bathroom independently...and maybe having a visual cue on his desk to ask at those two times. He could have a timer set on his iPad and if it goes off, raise his hand...to go to

the bathroom. Whatever sequence you decide to use needs to be explained and practiced with him.”

The classroom teacher followed up with the parent via email on August 18, 2022 writing, “He does not seem to need any visual cue reminders, and we are constantly working on having him (and all the other kids in the room) cross his fingers and show me when he has to go...he has done this a couple of times. We use the restroom as a class at 9:00 am, 11:30 am, and one time in the afternoon. Then I have another student that I am working with, so my phone alarm goes off at 9:00, 10:30, Noon, 1:30 and 3:00 to remind both of them to go and use the restroom if needed. We'll eventually try to slowly get rid of the reminders every hour and half.” The parent responded, telling the teacher she was “glad he is starting to use the restroom sign...He will probably always need a reminder in the afternoon, or he still needs to ‘attempt’ then.”

On August 24, 2022, the classroom teacher notified the parent via email that the student had soiled himself. The teacher told the parent that her alarm was set for 9:00, 10:30, Noon, 1:30 and 3:00 for bathroom breaks in addition to all-class bathroom breaks “about 3 times during the day.” The teacher stated that she had reminded the student to show crossed fingers to be allowed to use the restroom at any other time.

The parent responded via email asking whether someone was “practicing with him using a visual schedule to remind him to initiate raising his fingers to go to the bathroom independently...Having times to go is a great prevention of accidents. He needs to practice initiating the request at certain points, then it will carry over for him to request it when he needs to go...having him check off asking [during various times]. If he has a picture of an activity, he has a visual reminder to ask to go to the bathroom at that time...[such as during snack time, reading time, before lunch]...and if he is able to initiate asking to go to the bathroom those three activities, a more complex goal would be for him to request to go at music, computers or gym class, since those are different people.”

In an email to the classroom teacher on August 27, 2022, the parent wrote, “I think the resource teacher providing him visuals can reduce stress in the environment...He really benefits from visuals and it increases his participation significantly when he knows what to expect.”

When progress toward attainment of his annual goal was monitored on October 7, 2022, the student had demonstrated “some progress towards achieving” the goal. According to the IEP Progress Report – Annual Goal for that monitoring period, more reminders from the teacher and classroom paraeducator were needed for the student to use the toilet. He was using the whole class schedule and responding to reminders from an alarm on his teacher’s watch.

On October 23, 2022, the classroom teacher wrote an email to the parent stating that on the last day of school for the week the student was “really having an ‘off’ day with some defiant behaviors and non-compliance...I am backing off with my reminders (only doing 2/5), so he might experience some frequent accidents...Can you think of anything that he would like to work for if he has completely accident free (with only 2 reminders) days for a period of time?”

In an email to the parent on November 9, 2022, the classroom teacher wrote, "He is doing GREAT...no reminders from me at all for the past 3 weeks!!!"

Progress on the student's goal was again monitored in December 2022. According to the IEP Progress Report – Annual Goal dated December 5, 2022, the student had met his goal (5). According to the report, the student would use his watch to remind him to take a toilet break or would use the restroom at appointed times as did his classmates.

The student's IEP was revised in an IEP team meeting on December 5, 2022. The only Annual Goal included in the student's December 5, 2022 IEP addressed self-advocacy when needing to use the restroom:

"[The student] will continue to advocate for himself by raising his hand or showing the restroom signal to use the restroom with 1 or less prompts by December 4, 2023."

According to the "Baseline" for the goal, the student is able to toilet independently and "goes during times of the day when the whole class goes and/or when he is given a reminder through his watch or adult."

When the student's progress toward attainment of his annual goal was monitored on March 10, 2023, the student was making sufficient progress, but significant behavioral changes began to appear. The student was having more wetting and soiling incidents, and his behavior was increasingly inappropriate. Additionally, a parent-initiated outside evaluation of the student had been completed, and the results of that evaluation were available to be shared by the parent who had submitted a written request for a reevaluation by the district.

The student's IEP team met on April 26, 2023 and determined that a reevaluation should be conducted to gather additional data on the student's toileting as well as other behavioral needs. The parent provided her written consent for the reevaluation on May 2, 2023. The reevaluation is scheduled to be completed within 60 school days of the date of the parent's written consent.

Summary and Conclusions

The district monitored the student's progress toward attainment of the goals established in his January 12, 2022 and December 5, 2022 IEPs. By December 5, 2023, the student had achieved the toileting goal and was using the bathroom without any prompts from his teacher.

A new goal was established by the IEP team at the annual IEP review. That goal focused on maintaining that level of independence in requesting to leave the classroom to use the toilet with 1 or fewer prompts from his teacher. The student was making sufficient progress to achieve that new goal at the time of the first monitoring period, but behavioral changes began to arise. The IEP team met to talk about the student's needs and made the decision to conduct a reevaluation in order to collect more data on the student's needs.

While toileting has been a focus of the student's goals during the 12-month period covered by this complaint, his goals have been directed at making the student progressively more independent in initiating a request to use the bathroom. The student had achieved the goal established in his

January 12, 2022 IEP and appeared to be on track to meet his December 5, 2022 annual goal until late March and April 2023. At that point an IEP team meeting was held to discuss changes in the student's behavior, to provide the parent the opportunity to share the results of an outside evaluation, and to address the parent's request for a reevaluation of the student by the district.

The evidence shows that the student did meet the goal established in his January 12, 2022 IEP and was making progress toward achieving a new goal established by his December 5, 2022 IEP. The district properly held an IEP team meeting to discuss the change in the student's progress that began at the end of March 2023 and determined that the reevaluation requested by the parent should move ahead in order to develop the information needed to make changes to the student's IEP. A violation of special education statutes and regulations is *not* substantiated on this issue.

Issue Seven

The district failed to complete a required triennial re-evaluation.

The parent alleges that the triennial reevaluation of the student, which was due March 3, 2022, was not completed and that no rationale was provided by the district as to why the reevaluation was deferred.

This issue alleges a violation of special education statutes and regulations which occurred more than 12 months prior to the receipt of this complaint on July 18, 2023, and was not investigated. However, the district provided the investigator with a consent for reevaluation to be conducted as a "Review of Existing Data with no formal assessments" signed by the parent on November 11, 2021. The district also provided a copy of an Evaluation Report dated January 12, 2022 signed by the parent.

In a telephone conversation with the investigator on July 28, 2023, the parent acknowledged that she had given consent for a reevaluation using existing data.

Issue Eight

Progress monitoring data was not included when the student's IEP was revised on March 10, 2023. (Note: This date was subsequently amended by the parent in a telephone conversation with the investigator as noted below.)

Parent's Position

In a telephone conversation with the investigator on August 16, 2023, the parent stated that while the district had provided progress monitoring information on the student's goal at the time of the annual review of the student's IEP on December 5, 2022 (amended date), the district did not have additional data available on the student's toileting behavior outside of his first-grade classroom. In the opinion of the parent, the absence of this data limited the district's ability to focus on potential toileting needs outside of the general education classroom.

District's Position

It is the position of the district that the parent has been provided with all progress monitoring information required by special education statutes and regulations.

Applicable Statutes and Regulations

It is the job of the IEP team – which includes the parent – to develop appropriately ambitious and challenging goals for the student when reviewing and revising the student's IEP. Special education statutes and regulations do not specify what type of data a team must collect in order to develop appropriate goals for a given student.

It is up to the team to determine what data or other information it will need to make informed decisions regarding the development of the student's annual goals. Parents, as well as other team members, have a responsibility to participate and provide their input into their child's education.

Once goals have been developed by the IEP team, the district is required to provide periodic reports on the student's attainment of those goals (K.S.A. 72-3429(c)(3); 34 C.F.R. 300.320(a)(3)). Neither statutes nor regulations specify that any additional data be collected or maintained.

Investigative Findings, Summary and Conclusions

The district conducted the required quarterly monitoring of the student's annual goals and provided information on the student's progress to the parent. While it may have proven useful to the IEP team -- at the time of the annual IEP review on December 5, 2022 -- for the district to have collected additional data on the student's behavior outside of the classroom setting, there is no legal requirement in special education statutes or regulations that it do so. A violation of special education statutes and regulations is *not* substantiated on this issue.

Issue Nine

The district failed to consider the parent's input when developing his IEP.

Parent's Position

It is the position of the parent that the district failed to listen to her needs when developing the student's December 5, 2022 IEP. In her complaint, the parent specifically references the district's response to her suggestions regarding classroom supports and to her request that an IEP remain in effect for the student pending the completion of a parent-initiated outside evaluation.

District's Position

It is the position of the district that the parent attended the annual IEP team meeting for the student on December 5, 2022 and fully participated in the discussion and development of the student's IEP. The district asserts that specific concerns voiced by the parent during the meeting were included in the IEP.

Applicable Statutes and Regulations

To address the requirement to strengthen the role of parents in the special education process, Congress mandated that schools afford parents the opportunity to be members of any decision-making team for their child, including eligibility, initial evaluation and reevaluation, and development of an individualized education program (IEP) for the provision of a free appropriate public education (FAPE). Schools must ensure that parents have the opportunity to be members of the IEP team that makes decisions on the educational placement of their child (K.A.R. 91-40-17). IEP team meetings must be scheduled at a mutually agreed-upon time and place. Parents must be provided with notice of meetings that meets established requirements. The parents should be a part of the group of persons who are determining the educational placement for their child (K.A.R. 91-40-21). The parent then has the right to consent, or refuse to consent to, any substantial change in placement of, or material change in services for their child except under special circumstances (K.S.A. 72-3430), which do not apply to this complaint. For example, parental consent is not required if the change is the result of disciplinary actions or if the district has made a reasonable attempt to obtain consent but the parent did not respond. Additionally, a change in the instructional methodology used to provide a service, even if the methodology is specified in an IEP, is not a material change in services. For example, a change to a strategy within a behavior intervention plan is a change in the instructional methodology, not a material change in services and does not require parental consent.

When developing the IEP, the IEP team must consider the concerns of the parents for enhancing the education of their child (K.S.A. 72-3429). That does not mean that every suggestion offered by the parent must be incorporated into the IEP. If the IEP team cannot reach agreement on the content of the IEP, the local education agency (LEA) representative at the meeting has the ultimate authority to make decisions and to then provide parents with appropriate notice and request consent for the proposed action as appropriate.

Investigative Findings

Between November 7, 2022 and November 29, 2022, the parent and the district exchanged a series of emails to determine a mutually agreed upon date and time for the student's annual IEP team meeting. The parent agreed to waive her right to 10-day notice so that the meeting could occur on December 5, 2022 as reflected on a Notice of Meeting dated December 1, 2022.

The parent attended the annual IEP team meeting and participated in the development of the IEP. The "Special Considerations" section of the student's December 5, 2022 IEP included a section entitled "The IEP team has considered the concerns of the parent including the following:"

"Mom shared a concern that [the student] is picking a library book that is too difficult for him and is too above his independent reading level. She also shared that she is concerned that with many math strategies taught, it might be difficult for [the student] to be able to independently pick a strategy that works best for him. [The student] has been soiling himself as soon as they get home

from school or in the car on the way home. Mom's goal for [the student] is for him to empty his bladder at school."

As the parent noted in her complaint, there was discussion regarding the "supports she suggested" for the general education classroom. According to the parent's statement in the complaint, the school was able to provide all the supports she had identified.

In her complaint, the parent also states that she requested that the team "maintain the IEP and let [her] get an outside evaluation..." The team finalized an IEP for the student which included a material change in the special education services for the student, moving the student to indirect support from the special education teacher. The parent was provided prior written notice of that change and provided her written consent on December 5, 2022.

Note: The district also made a material change to the supplemental aids and services provided to the student without first providing prior written notice to the parent and obtaining her consent. That issue is covered above under Issue Four.

Summary and Conclusions

As noted above under Issue Four, the district failed to provide the parent with prior written notice and to obtain the written consent for a change to the supplemental aids and services being provided to the student.

There is, however, ample evidence to show that the district considered the input of the parent when developing his December 5, 2022 IEP. The parent and the district collaborated to arrive at a mutually agreed upon time and place for the student's annual IEP review. The parent attended the meeting and participated actively, voicing her concerns (specifically reflected in the student's IEP), discussing classroom supports, and requesting a continuation of special education services pending the completion of a parent-initiated outside evaluation. The district agreed to continue to provide services to the student under an IEP and provided the parent with prior written notice for a material change in special education services to the student. The parent provided her written consent for the proposed change. Under these circumstances, a violation of special education statutes and regulations is *not* substantiated on this issue.

Issue Ten

The district asked the parent to provide Assistive Technology (AT) equipment needed by the student.

Parent's Position

The parent contends that the first-grade teacher asked her to provide two watches and a weighted blanket for the student. While the parent provided these items, she asserts that providing necessary items to meet the student's AT needs should be the responsibility of the district, not the parent.

District's Position

It is the position of the district that the IEP team (which included the parent) considered the AT needs of the student during the IEP annual review of December 5, 2022 and determined that the student had no AT-related needs.

Applicable Statutes and Regulations

Kansas statutes, at K.S.A. 72-3429(d)(8), require a student's IEP team to consider whether the student "requires assistive technology devices or services" when developing the student's IEP. Any needs identified should be reflected in the content of the IEP.

Investigative Findings

The "Special Considerations" section of both the student's January 12, 2022 and December 5, 2022 IEPs state that the student does not require Assistive Technology. The parent participated in the IEP team meetings when both of these documents were developed.

The student's classroom teacher sent an email to the parent on October 20, 2022 writing, "I was wondering if you guys were interested in getting [the student] a watch that could be set to vibrate to remind him of bathroom breaks." The parent responded via email on October 21, 2022 stating she was "researching for a watch."

The parent notified the teacher via email on October 26, 2022 that the student would be wearing a watch set for the teacher's suggested reminder times. On October 28, 2022, the classroom teacher notified the parent via email that the student had lost part of his watch.

The parent subsequently purchased a second watch for the student, but by November 29, 2022, the vibrator on the watch was missing.

In an email to the classroom teacher on March 23, 2023 following an increase in instances of inappropriate behavior on the part of the student, the parent wrote, "...maybe he needs deep sensory input or movement to regulate his body." The classroom teacher responded via email asking, "Does he like any sensory items...weighted toy or fidgets or stress ball?"

In an email on March 24, 2023, the parent writes to the classroom teacher:

"We have a weighted blanket at home, he likes, jumping on the trampoline, or doing movements by imitating a video, if you have a bounce and move program video (running in place, balancing during a roller coaster, flying like an airplane) you guys use. At home we do massages, (tactile squeezes on his hands and legs) but that would be similar to a weighted blanket! If you don't have a video program for MVMT let me know and I can send some app/log in websites that are free."

The classroom teacher responded, "Do you have a little weighted blanket that would just cover his legs? Mine is a big one!" According to the parent, she sent a blanket to school, but it was immediately returned to her.

Summary and Conclusions

The student's IEP team (including the parent) considered the student's AT needs when developing his December 5, 2022 IEP and determined that he did not require assistive technology.

While the general education teacher did reach out to the parent to suggest the purchase of a watch to provide a reminder to the student to take a bathroom break, there is no indication that the watch was something that was required by the student in order to achieve his IEP goals.

The use of a weighted blanket was suggested by the parent. While the parent sent a smaller blanket to school for the student's use, there is, again, no indication that the blanket was required. As noted by the teacher, a larger weighted blanket was available in the classroom for the student's use.

The IEP team considered the AT needs of the student when developing his December 5, 2022 IEP and determined that the student did not require AT aids or services. No evidence was provided by the parent to show that either the watch or weighted blanket provided by the parent were required by the student. Under these circumstances, a violation of special education statutes and regulations is *not* substantiated.

Corrective Action

Information gathered in the course of this investigation has substantiated noncompliance with special education statutes and regulations on an issue presented in this complaint. Specifically, a violation has been substantiated with regard to K.S.A. 72-3430(b)6 which requires that parents be given prior written notice of and must provide written consent for the removal or addition of a supplementary aid or service within a student's IEP.

Therefore, USD #233 is directed to take the following actions:

- 1) Submit to Special Education and Title Services (SETS), within 21 calendar days of the date of this report, a written statement of assurance stating that it will comply with K.S.A. 72-3430(b)6 by
 - a. providing parents with prior written notice of any proposal to add or remove a supplementary aid or service within a student's IEP; and
 - b. obtaining the written consent of the parent before taking the proposed action.
- 2) By no later than September 11, 2023, the district shall schedule an IEP team meeting for the student to review the student's need for supplementary aids and services. That meeting should be held no later than September 21, 2023. At that meeting, the team shall determine whether the student needs a visual schedule to assist him in enhancing toileting independence.
 - a. If the team determines that a visual schedule is needed, the student's IEP will be amended to include these elements, the district will provide the parent with prior written notice of the proposed change to the student's IEP and her consent for the

addition will be requested. The visual schedule will not be added to the student's IEP unless parental consent is obtained.

- b. If the team determines that a visual schedule is not needed, the district will provide the parent with prior written notice of the removal of this accommodation and will seek parental consent for the action. If the parent does not consent to the removal of the accommodation, the student's IEP will be amended to include a visual schedule under the supplementary aids and services listed in the student's IEP.
- 3) Within 5 school days of the IEP meeting described above under Corrective Action 2, a copy of the relevant prior written notice document will be provided to SETS.
- 4) By no later than September 11, 2023, USD #233 shall submit to SETS for approval a plan for the training of special education staff in the school building where this student attends school regarding the management of changes to supplementary aids and services in students' IEPs. The training shall be completed no later than October 5, 2023, and within five school-days of completion of the training, USD # 233 shall submit to SETS written confirmation that the training has been completed.
- 5) Further, USD #233 shall, within 20 calendar days of the date of this report, submit to SETS 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).

Investigator



Diana Durkin
Complaint Investigator

Right to Appeal

Either party may appeal the findings or conclusions in this report by filing a written notice of appeal in accordance with K.A.R. 91-40-51(f)(1). The written notice of appeal may either be emailed to formalcomplaints@ksde.org or mailed to Special Education and Title Services, 900 SW Jackson St, Ste. 602, Topeka, KS, 66612. Such notice of appeal must be delivered within 20 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)