

KANSAS STATE DEPARTMENT OF EDUCATION
SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT
FILED AGAINST
UNIFIED SCHOOL DISTRICT #392
ON NOVEMBER 6, 2023

DATE OF REPORT DECEMBER 5, 2023

This report is in response to a complaint filed with our office by ----- on behalf of his daughter, ----- . In his complaint, ----- states that requests for additional information could be directed to him or to his wife, ----- . For the remainder of this report, ----- will be referred to as "the student." ----- will be referred to as "the parents." ----- will be referred to as "the student's father" or "the parent," and ----- will be referred to as "the student's mother." USD #392 contracts with the North Central Kansas Special Education Cooperative (NCKSEC) Interlocal #636 for the provision of special education and related services to students enrolled in the district. In the remainder of this report, "the district" will refer to both of these agencies.

Investigation of Complaint

On November 10, 2023, the investigator spoke by telephone with Cher Greving, the Director of Special Education for the NCKSEC. The investigator spoke by telephone with the student's mother on November 17, 2023.

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

- Evaluation Team Report with Prior Written Notice and Request for Consent dated November 9, 2021
- IEP for the student dated November 18, 2021
- Staffing Notes dated November 9, 2021
- IEP Amendment Between Annual IEP Meetings with Prior Written Notice and Request for Consent dated February 7, 2022
- Report of Complaint dated April 6, 2022
- Notice of Meeting dated October 13, 2022
- Staffing Notes dated October 25, 2022
- IEP (proposed) dated October 31, 2022
- Prior Written Notice and Request for Consent for Identification, Special Education and Related Services, Educational Placement, Change in Services, Change in Placement, and Request for Consent dated October 31, 2022
- Staffing Notes dated October 31, 2022
- Notice of Status Change dated October 31, 2022

- Prior Written Notice and Request for Consent for Identification, Special Education and Related Services, Educational Placement, Changes in Services, Change in Placement, and Request for Consent emailed to the parents on November 22, 2022
- Report of Psychoeducational Evaluation dated November 29, 2022
- Prior Written Notice and Request for Consent for Identification, Special Education and Related Services, Educational Placement, Changes in Services, Change in Placement, and Request for Consent dated February 16, 2023
- Communication and Documentation record covering the period of November 10, 2022 to April 4, 2023
- Letter dated March 27, 2023 from the special education teacher to the parents
- Email dated April 3, 2023 from the student's mother to the special education teacher
- Notice of Meeting dated September 12, 2023
- Draft IEP dated September 28, 2023
- Staffing Notes dated September 28, 2023
- Prior Written Notice and Request for Consent for Identification, Special Education and Related Services, Educational Placement, Change in Services, Change in Placement, and Request for Consent dated September 28, 2023
- Email dated October 9, 2023 from the director of special education to the student's mother
- Professional license for the student's current special education teacher
- Certificates of completion for dyslexia training for the student's current special education teacher

Background Information

This investigation involves a 12-year old girl who is in the 6th grade in her district's junior high school. The student has been enrolled in her current district since 1st grade, having previously been determined by another Kansas district to be eligible for special education services at the preschool level because of her speech/language needs. The student transitioned to Kindergarten one year behind her same-age peers. While in Kindergarten in her previous district, the student's primary exceptionality was changed to Developmental Delay. The student's primary exceptionality was changed to Learning Disability by the current district in 2019.

The student has been clinically diagnosed with Attention Deficit Hyperactivity Disorder (ADHD) Inattentive Type. She was diagnosed with Dyslexia and a Written Language Disorder in 2019.

Diagnosis of Dyslexia is a clinical decision made by a doctor, clinical psychologist, neurologist, or other clinical professional. The identification of a child with a "Learning Disability" - the term used by the Individuals with Disabilities Education Act (IDEA) - is made by a school team

through a comprehensive evaluation. The term "Learning Disability" is used in the IDEA to describe children who have a disability in the areas of reading, writing, or math.

The IDA (International Dyslexia Association) defines "Dyslexia" as follows:

"Dyslexia is a specific learning disability that is neurobiological in origin. It is characterized by difficulties with accurate and/or fluent word recognition and by poor spelling and decoding abilities. These difficulties typically result from a deficit in the phonological component of language that is often unexpected in relation to other cognitive abilities and the provision of effective classroom instruction. Secondary consequences may include problems in reading comprehension and reduced reading experience that can impede growth of vocabulary and background knowledge." (See <https://dyslexiaida.org>.)

The National Institute of Neurological Disorders and Stroke, a division of the National Institute of Health, defines attention deficit hyperactivity disorder (ADHD) as

"...a neurobehavioral disorder marked by trouble controlling impulsive behavior, difficulty paying attention, or overactivity. It is one of the most common neurodevelopmental disorders of childhood...[ADHD] interferes with a person's ability to stay on task and maintain focus." (See ninds.nih.gov.)

At the request of the parents, an updated cognitive assessment of the student was completed by the district in early 2022. According to that assessment, the student performed at the 2nd percentile with regard to general intellectual ability. Her score was negatively impacted by weaknesses in the areas of phonological processing, short-term memory, and perceptual speed - key areas in the development of reading skills.

The student received outside vision therapy at the expense of the parents while in first grade. The parents have also previously contracted for the student to receive supplemental instruction services from the Herndon Speech-Language-Hearing Clinic and Phillips Fundamental Learning Center. Beginning in the Spring of the 2022-23 school year, the parents contracted with a private tutor through Reading Redefined to provide services to the student. During the student's fifth grade year, the student left school on three days each week for off-site video conferences with the tutor. Currently, the student's mother reports that the student is being tutored four days a week.

Issue

In outlining facts in support of his complaint, the parent cited issues going back to 2018 when the first IEP for the student was written. However, special education statutes and regulations state that a formal complaint must allege that a district has - within not more than one year prior to the date the complaint is received and filed with the commissioner of education - violated a state or federal special education law or regulation. (See K.A.R. 91-40-51(b).)

The circumstances in this case did require the investigator to look outside of the specified 12-month window to understand how services were being provided to the student during the year prior to the date this complaint was received. However, this investigation did not attempt to determine whether any violations of special education laws or regulations occurred outside of the one year timeframe.

In his complaint, the parent identified the following issue:

The student is a 12-year-old 6th grader who is reading at a 1st grade level. She has made no progress improving her reading skills in the 5 years at her elementary school.

Parents' Position

The parent states that he and the student's mother have taken the student to experts across the state on their own time and largely at their own expense and have presented the district with reports stating what programs the student needs and what training is needed by her teachers.

The parent contends that the district has refused to provide the needed programs and to pay all the associated fees. The parent states that the student needs intensive intervention from a trained dyslexia therapist five days a week. He contends that the district should either employ the student's current tutor to provide the student's special education services during the school day - replacing the services currently being provided by the district - or should cover the parents' costs for paying for those services.

District's Position

It is the position of the district that special education services have been provided to the student under IEPs that have been developed with the participation of the parents and implemented with their consent. The district asserts that the student is making progress on her IEP goals with services being provided by qualified staff currently employed by the district.

Applicable Statutes and Regulations

Federal regulations, at 34 C.F.R. 300.101, require states to ensure that a free appropriate public education (FAPE) is made available to all children with disabilities residing within the state. Accordingly, Kansas regulations at K.A.R. 91-40-2(b)(1) require that each school district makes FAPE available to each child with a disability residing in its jurisdiction. Federal regulations, at 34 C.F.R. 300.17, define FAPE, in part, as special education and related services provided in conformity with an Individualized Education Program (IEP).

At 34 C.F.R. 300.320, federal regulations define an IEP as

"a written statement for each child with a disability that is developed, reviewed, and revised at a meeting...that must include...a statement of measurable annual goals...designed to meet the child's needs that result from the child's disability...and a statement of the special

education and related services and supplementary aids and services] to enable the child to be involved in and make progress in the general education curriculum, and meet each of the child's other needs that result from the child's disability."

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)*). The IEP 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 any lack of expected progress toward the annual goals and in the general education curriculum, where appropriate. 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.

While parental involvement is essential to the decision-making process regarding their child's special education services, the choice of special education service providers for a child is left to the district. Each school district must ensure that all personnel necessary to carry out the requirements of IDEA are appropriately and adequately prepared and trained. All special education personnel, as appropriate, shall have the content knowledge and skills to serve children with exceptionalities. This includes special education teachers, related services personnel and paraeducators. School districts must take steps to actively recruit, hire, train, and retain qualified personnel to provide special education and related services to children with disabilities (34 C.F.R. 300.156; 34 C.F.R. 300.207).

Investigative Findings

An annual review of the student's IEP was conducted on November 18, 2021. According to the "Parent Input/Concerns" section of that IEP, the parents were concerned about the student's progress, expressing their belief that special education was not providing enough resources for the student. The student's father told the IEP team that he did not want the student taught life skills but instead wanted the student to attend the Davis Program in another town - an evening and weekend private tutoring service provided by a Title I teacher in another district.

The district proposed that, for the rest of her fourth grade year, the student come to the resource room for 100 minutes a day, five days a week to receive instruction using an alternate curriculum for reading and language arts. Alternate instruction in math for 45 minutes, 5 days a week was also proposed. Additionally, the district proposed that the student receive special education pull out services for study skills for 30 minutes, five day a week. Special education support would be provided in the general education setting for 50 minutes twice a week and 20 minutes twice a week in the areas of science and social studies.

The district proposed a reduction in reading and language arts from 100 to 75 minutes, five times a week for the student's fifth grade year. Math instruction would, however, increase from 45 minutes to 60 minutes, five days a week. The student would continue to receive 30 minutes of support for study skills, five days a week. Her in-class support would change to 30 minutes, four times a week for science and social studies. The student would, throughout the period of her IEP, receive twice weekly speech/language services.

The November 18, 2021 IEP specified twelve accommodations addressing seating, use of an alternate math curriculum and a calculator, use of an alternate reading/language arts curriculum, highlighting key words and answers in text, permission to give verbal answers, reductions and modifications to assignments and her spelling list, having a scribe, having tests read to her in a separate location, and limiting assignment responses to a few multiple choice options. The IEP contained a reading goal related to sight words and another for reading words with vowel digraphs.

The student's November 18, 2021 IEP contained one goal to address the development of reading skills and one for the development of phonological awareness. Her reading goal was:

"By the end of the IEP year, when given 20 sight words from a Primer list of words, [the student] will read the words with 75% accuracy 4 out of 5 opportunities."

The student had been working on the Primer sight word list under her previous IEP, but she did not retain those words over the summer. When she was first tested in August of 2021, she was only able to read half the words correctly. By November 2021, she was showing mastery at the 80% level.

The student's phonological awareness goal was:

"By the end of the IEP, during structured and unstructured activities, [the student] will improve phonological awareness skills through various phonemic awareness tasks (phoneme deletion, addition, substitution, segmentation, isolation, and rhyme recognition) with at least 80% accuracy and minimal cuing."

The IEP team met on March 31, 2022 to discuss the student's progress and review the results of the cognitive assessment. The team compared the reading program currently being used with the student (Sonday) with the program recommended by an outside source (Alphabet Phonics) - both of which were approved by Orton Gillingham.

The team also discussed extended school year (ESY) services for the student. The district proposed that the student receive 2 hours, three days a week of services for 10 weeks - 60 minutes for reading and 60 minutes for math. The parents reported that the student had stated she did not "want more help" and the family was very busy. No decision on summer services was made at that time, but the parents later decided to send the student to the ESY program.

The student's IEP team met on August 11, 2022, before the start of the 2022-23 school year to review the student's performance in ESY and to address other topics for the upcoming school year. The team decided to add the services of a behavior consultant to the student's IEP to provide support for staff. Reading support was decreased to 45 minutes, five days a week. The 30 minutes of study skills support was also removed from the student's IEP. According to the IEP amendment and prior written notice form, the team felt that this reduction in services would "encourage [the student] to be more independent and be more involved with others." Because the student had already met both of the reading goals in her November 2021 IEP, a new goal was developed to focus on reading fluency. The new goal was:

"[The student] will increase her reading readiness skills in the area of word fluency, within 30 seconds to 55% as measured by work samples."

The parents provided their written consent on August 22/23, 2022 for all of the changes proposed by the district.

As was established in the April 6, 2022 investigation report of a previous formal complaint against the district by the parents of this student, the special education teacher supervising the student's reading instruction meets state-established requirements to be considered "appropriately and adequately prepared and trained to teach students with specific learning disabilities, including those students with dyslexia."

On October 31, 2022, the student's IEP team conducted an annual review of her IEP. An advocate for the parents was in attendance via Zoom and spoke on behalf of the parents who were also present. According to notes taken during that meeting, the advocate expressed the parents' concern that the student had made little progress in the area of reading since being diagnosed (with Dyslexia) in 2019, noting that the student was still not reading above a first grade level. The advocate asserted that the district had no "targeted intervention" in place for the student and expressed concern that the district was not "taking appropriate actions toward addressing [the student's] low [cognitive and academic achievement] scores" as reported in the report of an outside evaluation obtained by the parents in the Spring of 2022.

The advocate stated that she "would like the school to quit working on fluency" and to instead focus on accuracy with regard to the student's reading. The advocate questioned the reading program being used by the district, saying she would "like to do additional research on the program," and stated that she wanted the district to stop using "the Bob Books" with the student, preferring something she felt was more appropriate for a fifth grade student.

The advocate said that she was concerned that IEP goals "had not been updated in five years...stated that it is also a concern that schools quit teaching reading after 5th grade." She questioned the student's pull-out time in the resource room, asking why that time had been reduced through an IEP Amendment in August 2022. The parents stated that they agreed that the student "would be encouraged and motivated to receive less time in the resource room and

more time with her peers." The advocate suggested that the student be pulled from an elective class for her reading instruction. Pulling the student from her band elective was discussed.

The district proposed that, for the remainder of the 2022-23 school year, the student come to the Resource room for alternate instruction in math for 50 minutes, four days a week, and that she come to the Resource room five days a week for 45 minutes for alternate instruction in reading. In addition, the district proposed that the student receive 30 minutes of support in the general education classroom during science and social studies instruction four days a week as well as an additional 90 minutes once a week.

For the 2023-24 school year, the district proposed that the student receive special education support for 50 minutes five times a week in a special education setting for alternative math instruction and 100 minutes five times a week for alternative instruction in reading and English. An additional 50 minutes five times per week of Study Skills instruction was also proposed. She would be provided with 100 minutes of support in the general education setting five times per week in her Science and Social Studies classes. The student would also continue to receive 20 minutes of speech/language support twice a week in a special education setting. A Behavior Consultant would offer support to staff for 10 minutes weekly to discuss strategies to help the student with peers in the school setting. An Occupational Therapist would consult with staff monthly for 10 minutes regarding expectations for the student's writing and would provide assistive technology support.

In addition to these special education and related services, the district proposed alternate curriculums for both math and reading, that the student be allowed to use text to speech programs, and that she have a scribe to assist her when forming sentences or copying from the board. The student's spelling list would be modified and shortened, she would be allowed to use a calculator, she would be provided reduced multiple choice options on daily assignments, key words in text would be highlighted, and she could provide verbal rather than written responses. The student would have access to a laptop and voice to text and text to speech extensions.

The proposed IEP contained the following reading goal:

"[The student] will increase her reading readiness skills in the areas of word reading fluency, within 30 second to 60% as measured by work samples."

The proposed IEP contained the following annual goal related to phonemic awareness:

"By the next annual IEP, using visual supports and manipulatives, [the student] will demonstrate an average of 80% accuracy on the following phonemic awareness tasks: phoneme deletion, phoneme addition, segmenting 4 phoneme words, phoneme isolation."

The district provided the parents with prior written notice of its proposal following the October 31, 2022 team meeting. The form noted that consideration had been given to providing more

special education services, but that option was rejected "due to needing to include [the student] in her general education classroom as much as possible." The team also considered "shifting skills addressed in speech-language services to special education support during her reading curriculum," but the team rejected that option because "specifically targeting phonemic awareness skills with the SLP [speech/language pathologist] will support what [the student was] doing in the Sonday curriculum [an Orton-Gillingham program designed specifically for students with Dyslexia]."

The parents declined to give consent for the district's proposed changes to the IEP, so the district continued to provide special education and related services to the student as they were described in the student's November 2021 IEP. While, after providing notice to the parent of proposed changes to IEP goals, the district did begin working with the student on those new IEP goals for reading and phonemic awareness, proposed changes in special education services and related services were not implemented. Because the student's November 2021 reading goals had been amended in August 2022, the district continued to implement that amended goal.

Following the annual IEP team meeting on October 31, 2022, the parents and their advocate met with the director of special education and the district superintendent. Through their advocate, the parents told the district that they did not believe the special education teacher had the skill set needed to deliver the reading intervention the student needed and requested that, in a timely manner, the district appoint another teacher to deliver the student's reading instruction.

On November 10, 2022, the special education teacher sent a text to the student's mother writing:

"We are checking in with you guys to see if you guys are ready to sign the consent form from the IEP meeting, or if there are possibly proposed changes you guys are thinking of to the IEP?"

The student's mother responded:

"I think there are some changes. Let me talk to [the student's father] tonight and I'll let you know."

The student's mother sent a text to the special education teacher on November 11, 2022 requesting another copy of the proposed IEP. The special education teacher emailed that copy to the parent on that same date.

The special education teacher sent a follow up text to the student's mother on November 14, 2022 asking for updates. The student's mother texted:

"Not yet. I sent it to [the parent advocate] to review."

The parents requested that the district pay for an independent educational evaluation (IEE) of the student. That evaluation was conducted on November 29, 2022.

A second meeting was held on November 21, 2022 to follow up on the parents' requests of October 31, 2022. Present at this meeting were the director, the superintendent, the student's mother, and the parent advocate. At this meeting, the student's mother - through her advocate - requested that the district pay for a private tutor to work with the student during the school day and pay for these private tutoring services.

The district recognized that the working relationship between the student and the special education teacher was not a positive one and agreed to begin having the district's Title I teacher deliver services to the student under the supervision of the special education teacher.

The parents were provided with prior written notice on November 22, 2022 via email from the director denying the parents' request for a private tutor to be employed by the district but agreeing to appoint another teacher to provide the student's reading instruction. According to the prior written notice form, the district refused to employ the requested tutor for the following reasons:

"...the student is currently being offered services within the IEP that allow for appropriate instruction, ambitious goals that allow the student to make adequate progress. The reading program offered for this student is the Soliday System 1 that is endorsed by Orton Gillingham. This instruction is delivered in a separate one-on-one setting with a certified special education teacher who is now (since the IEP in October) co-teaching with the Title I reading teacher in the building. The special education teacher has completed a formal Soliday System training hosted by Soliday representatives along with an informal Soliday training hosted by a special education director. Both the Title I reading teacher and the special education teacher have completed dyslexia trainings in August 2021 and August 2022. The Title I reading teacher is scheduled to complete the formal [6 hour] Soliday training on December 21, 2022."

The prior written notice form notes that the parents considered but rejected the option of having the special education teacher and Title I teacher co-teach the student's reading. The Title I teacher, who held a Bachelor of Arts degree in psychology and a Master of Arts degree in clinical psychology, completed training specifically related to the student's reading program in December 2022. The Title I teacher began working with the student in November 2022 and continued through May 2023.

Progress on the student's phonemic awareness goal was monitored on December 9, 2022. At that time, she was making adequate progress, performing above 80% with regard to phonemic segmentation and phoneme deletion, at 79% in final phoneme isolation, and at the 70-75% level on phoneme deletion. The speech/language therapist noted that the skill was initially very difficult for the student but she had persevered and "demonstrated good progress."

Progress on the student's amended August 2022 reading goal was monitored on December 15, 2022. At that time, she was making progress toward attaining her goal and was showing gains on testing.

The IEP team met on February 16, 2023 to review the results of the IEE. The parents were provided with prior written notice regarding the review and the comparison of the results of the IEE with the district's November 9, 2021 evaluation.

The prior written notice (PWN) stated that the student had "made progress from 4th grade year (district evaluation) to her 5th grade year (IEE)" in all academic areas assessed using the Woodcock-Johnson IV Tests of Achievement. She was being provided with accommodations and modifications to address problems with sustained attention, working memory, and task initiation that had been identified in the IEE. The PWN also noted that the district has provided accommodations related to an area of weakness identified in the IEE report: becoming frustrated or easily distracted when working on assignments. The district stated that the student was provided with "brain breaks" such as going for a walk, getting a drink, or coloring. Brain breaks are allowed for all students in the district and were therefore not called out specifically in the student's IEP.

All other accommodations recommended by the outside evaluator were already a part of the student's IEP with the exception of "extended time to complete homework and tests." According to the PWN, the district did not feel this accommodation was needed because the student's assignments were being reduced, and she rarely had homework. Additionally, the student was being provided with opportunities to work on her daily assignments both in the classroom and in the resource room. She was given reduced assignments and a shortened spelling lists as part of her accommodations.

Both the district and the outside evaluator identified significant problems in the area of reading for the student. The February 16, 2023 prior written notice stated that the student had - since January of her 4th grade year - been provided with reading instruction using the Orton-Gillingham approved Sunday curriculum during 45-minute daily individualized instruction in reading.

According to the PWN, other ideas were mentioned while the team was meeting:

- Reduce workload with reading and writing assignments: This was already happening as part of the accommodations and modifications offered to the student as written in her most recent IEP.
- Encourage questioning and self-questioning when reading: On going questioning and conversations were taking place while the student was working through the Sunday curriculum as her specially designed instruction in reading. The student's classroom teachers were also using these techniques and strategies with the general education class as a whole when delivering instruction.

- Avoid copying from textbooks and white boards by providing the student with partially completed outlines or photocopying notes: As noted in her IEP, the student was being offered a scribe to dictate information when forming sentences, phrases, copying from the board and when asked to come up with her own ideas.
- Blocking pages with a piece of paper to help reduce visual overstimulation and help her keep her place while completing her work: The district noted that this is a strategy that had been used for this student and her classmates when needed.
- Allowing the option of oral expression rather than written expression: This accommodation was already included in the student's IEP.
- Use of computer to complete work: The student had been issued a Chromebook and had access to Google Classroom and to the text to speech function as an assistive tech accommodation.

According to the February 16, 2023 PWN, the district concluded that the IEP "in place for [the student was] appropriate." The parents subsequently requested mediation, but the mediation ended in an impasse.

The student's progress on her phonemic awareness goal was monitored on March 3, 2023. Again, she was recorded to have made adequate progress. Though her performance was somewhat lower on phoneme isolation, her segmentation skills were at the 100% level. She was working on phoneme addition, and focus was being placed on /s/ and /sp/ words.

The student was also making adequate progress on her reading goal when that goal was monitored on March 6, 2023.

On March 7, 2023, the special education teacher sent a letter to the parents writing that the November 2021 IEP (under which the district was continuing to provide services) had stated that extended school year services (ESY) were appropriate for the student. The teacher stated that ESY had not been discussed during the October 31, 2022 IEP team meeting, but the district remained "ready and willing to provide extended school year services." The November 2021 IEP called for ESY services to be provided for 60 minutes per days, three days per week, for 10 weeks. The teacher asked the parents to contact her or the superintendent/building principal if they wanted to discuss ESY services for the student.

On March 27, 2023, the student's mother sent a text to the student's general education teacher notifying her that the student would be picked up "around 9:15 to start with her tutor and then she'll be back."

On March 29, 2023, the student's mother sent another text to the student's general education teacher stating:

"[The student] has tutoring again today. Same time. She'll do this Monday Wednesday and Friday (sic) going forward..."

For the remainder of the 2022-23 school year, the student continued to leave school three mornings a week to be driven to her grandparent's home for a one hour videoconference with the private tutor.

The student's mother responded to the special education teacher via email on April 3, 2023 writing:

"We will not be needing [ESY]. [The student] is set up to work with a tutor over the summer and we are going to do that instead."

IEP goal progress was monitored again in May 2023. The student was not making adequate progress on either her reading or phonemic awareness goal. At that time, it was noted that she was able to "master her words with 100% accuracy when given more time." By report of the parent, the student did not "like" the teacher who was delivering her reading instruction and was resistant to working with her. In a similar vein, the progress report shows that the student "generally gets pretty upset about coming out of the classroom to attend speech sessions."

An IEP team meeting was held via Zoom on September 28, 2023. Participants included the parents, an LEA (local education agency) representative, a general education teacher, a special education teacher (who holds current licensure as a teacher of students with Learning Disabilities and has completed additional state training in Dyslexia), an OT, a speech/language pathologist, a school psychologist, a behavior consultant, and the student's tutor. The district proposed to provide the following services:

- 106 minutes of special education services for math, reading (30 minutes), and English once a week in a special education setting;
- 130 minutes of special education services in a special education setting for math reading (30 minutes), and English once a week in a special education setting;
- 91 minutes of special education services for math, reading (30 minutes), and English three times a week in a special education setting;
- 120 minutes of special education services for reading (20 minutes), science, and social studies five days a week in the general education setting;
- 15 minutes of speech/language therapy services three times per week in a special education setting which may be provided via virtual therapy classroom;
- 10 minutes every other week of staff consultation with a behavior consultant; and
- 15 minutes of speech/language services three times per week.

The district proposed that alternate reading curriculum be used with the student for reading called I.S.P.I.R.E. which is a multisensory reading program that integrates phonological awareness, phonics, spelling, fluency, vocabulary, comprehension, and handwriting. The program is based on the Orton-Gillingham approach to reading.

The student would also be provided with an alternate curriculum for math instruction. She would continue to have a scribe to dictate information when forming sentences, phrases, copying from the board and when asked to come up with her own ideas. The student would also continue to have access to a laptop and voice to text and text to speech extensions.

The IEP team developed the following goal in the area of reading:

"By the end of this IEP year, [the student] will maintain or improve her overall reading percentage of the 1st percentile based on national norms for her peers."

According to the IEP, the student scored at the 1st percentile for broad reading skills and the 4th percentile for AUTOREADING (decoding, word identification, spelling, and vocabulary) according to the 2023 Fall FastBridge assessment. The student scored at the 1st percentile in the area of reading fluency as assessed by CBM Reading measures.

The parents were provided with prior written notice of the district's proposed action at the September 28, 2023 IEP team meeting, but they did not provide written consent for the implementation of those services at that time.

At the September 28, 2023 IEP team meeting, the parents requested that the director speak with the private tutor that the parents had been employing to work with the student. To that end, a Zoom conference was held on October 4, 2023. Both the director and the assistant director participated in the conference along with the parents and the tutor. According to the director, the purpose of the conference was for the tutor to discuss her concerns with the student's IEP, data collected, and IEP goals developed over the years. The tutor requested that she be allowed to provide services to the student via Zoom and that her services replace the services being provided by the building resource teacher. The tutor asked that the district pay for her services to the student, stating that she currently had a similar arrangement with another school district to provide services to a special education student. The director told the team that she would consult with the superintendent of the district and follow up on the request via email.

On October 9, 2023, the director of the special education cooperative sent an email to the student's mother, the assistant director of special education, the district superintendent, the tutor and the junior/senior high school principal, following up on the tutor's request. The director stated that the cooperative/ interlocal would not pay for the tutor to provide services to the student because it was not permissible for her to do so.

In her email, the director stated that the decision as to whether to employ the tutor to provide three days of staff training for district staff would be made by the district superintendent who would follow up with the tutor on the subject. The director also stated that it would be the decision of the superintendent as to whether he wished to utilize the tutor for the provision of general education interventions as a part of the tiered MTSS building-level support.

In her email, the director stated that she had been notified by the junior high school principal that arrangements had been made for a room to be available where the student could teleconference with the tutor during the school day for her private tutoring session.

The October 9, 2023 email also stated that the district could not implement the services outlined in the prior written notice document the parents had been given following the September 28, 2023 IEP team meeting until the parents provided their written consent for those services. The student's father provided his written consent for the district's proposal on October 10, 2023.

Summary and Conclusions

In this complaint, the parent alleges a violation of FAPE, citing issues going back as far as 2018. A formal complaint must allege the occurrence of a violation of state and/or special education statutes or regulations within the 12-month period prior to the date the complaint is received - in this case, between November 6, 2022 and November 6, 2023, so this investigation focused primarily on that time period. Context is, however, important in determining whether such a violation can be substantiated.

The student began receiving special education services at the preschool level because of her speech/language needs. She entered Kindergarten one year later than her age peers and received special education support under an IEP. She was determined eligible for special education services under the exceptionality category of Learning Disabilities in first grade. The student has continued to receive special education support to address her learning needs throughout the ensuing years. Additionally, the student has received parent-supported vision therapy during first grade and extended outside support to address speech/language and phonological needs.

The student has been clinically diagnosed with Attention Deficit Hyperactivity Disorder (ADHD) Inattentive Type. She was diagnosed with Dyslexia and a Written Language Disorder in 2019. While these neurological disorders were less visible in this student than disabilities such as blindness or paralysis might be in another child, they proved to be no less impactful on the student's learning - particularly in areas related to language and reading. According to a cognitive assessment completed in early 2022, the student performed at the 2nd percentile with regard to general intellectual ability. Her score was negatively impacted by weaknesses in the areas of phonological processing, short-term memory, and perceptual speed - key areas in the development of reading skills.

A student's IEP must be reasonably calculated to enable the child to make progress appropriate *in light of the child's circumstances* and should aim to enable the student to make progress toward the student's annual IEP goals and in the general education curriculum. However, special education laws do not consider a child's IEP to be a guarantee of progress.

During the 12-month period covered by this complaint, the district has implemented IEPs that were developed with the participation and consent of the parents. When, in October 2022 following an annual IEP review, the parents did not agree to proposed changes to the student's IEP, the district properly continued to provide the student with special education and related services as well as the supplementary aids and services outlined in her November 2021 IEP. Only after receiving parental consent for changes proposed during a September 28, 2023 IEP team meeting were those changes implemented.

As noted in the February 16, 2023 prior written notice, the student had made progress from 4th grade year district evaluation to her 5th grade year (IEE) in all academic areas assessed using the Woodcock-Johnson IV Tests of Achievement. The student's progress toward attaining annual goals in the areas of reading and phonemic awareness has been regularly monitored and reported. While monitoring reports show that the student was struggling to make progress on her goals during the last quarter of the 2022-23 school year, she had also recently begun leaving school three days a week to participate in off-site video conferences with a private tutor and had begun to demonstrate a reluctance to leave her classroom for additional work with her special education service providers.

The parent asserts that a goal written to "maintain" a level of performance assumes that a student will make no progress with regard to her reading skills. However, the student's skills will have to grow if she is to maintain this ranking as her peers continue to expand their reading skills. That said, if the parent objects to this goal, he should call for an IEP team meeting to discuss the development of a new goal.

While the district has not conceded to every request made by the parent or incorporated every recommendation presented by an outside expert, evidence developed in the course of this investigation clearly shows that the district has made a good faith effort to provide FAPE to this student and to address parental concerns.

While parents are free to seek outside services to support their child's education, it is the responsibility of the district to decide whom they wish to hire to provide special education services to the students they serve in the school setting. While the parent may want the district to employ the student's tutor to provide the student's reading instruction, the district is under no legal obligation to do so. The district's decision not to employ the student's tutor is not a violation of FAPE.

This investigation did not uncover any evidence to show that the student was denied FAPE because of a refusal of the district to consider recommendations of outside experts. While districts are required to consider recommendations from outside agencies that are provided by the parents, special education statutes and regulations do not require the wholesale adoption of such recommendations. As was clearly stated in the prior written notice provided to the parents by the district on February 16, 2023, the student was already being provided with accommodations and modifications designed to mitigate areas of weakness identified by

an IEE. Some of the recommended accommodations were universally available to all students in the classroom and therefore not called out in the student's IEP. Other recommendations - such as those related to homework - were not incorporated into the student's IEP because they were not applicable in the case of this student. At the IEP team meeting of February 16, 2023, the team actively discussed additional accommodations and how those accommodations were currently being provided to the student.

Recognizing the wide diversity of students receiving special education services, neither state nor federal statutes and regulations require that a student reach any specific performance level in order for a student to have been considered to have received a FAPE. For a child to be considered to have received a FAPE, a district must develop, review, and implement an IEP designed to meet the child's needs that result from his or her disability. The district must provide the special education and related services and the supplementary aids and services needed to enable the child to be involved in and make progress in the general education curriculum, and meet each of the child's other needs that result from the child's disability. Ample evidence has been presented through the course of this investigation to show that - in light of the special circumstances associated with this student - the district has met its responsibility with regard to the provision of a FAPE. A violation of special education statutes and regulations *is not substantiated* on this issue.

Corrective Action

Information gathered in the course of this investigation has not substantiated noncompliance with special education statutes and regulations on the issues presented in this complaint. Therefore, no corrective actions are ordered.

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 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)