

KANSAS STATE DEPARTMENT OF EDUCATION
SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT
FILED AGAINST
UNIFIED SCHOOL DISTRICT #443 DODGE CITY COUNTY SCHOOLS
ON APRIL 1, 2024

DATE OF REPORT MAY 1, 2024

This report is in response to a complaint filed with the Kansas State Department of Education on behalf of ----- by her mother ----- . In the remainder of the report, ----- will be referred to as "the student." ----- will be referred to as "the complainant" or "the parent" or "the mother." -- ---- is the student's father. In the remainder of the report, ----- will be referred to as "the father" and together ----- and ----- will be referred to as "the parents."

The complaint is against USD #443. In the remainder of the report, USD #443 will be referred to as "the district". It is noted that Southwest Kansas Area Cooperative District - USD #613 (SKACD) Interlocal provides special education services for USD#443. In the remainder of the report, the "coop" shall refer only to SKACD. The student's school of attendance is Sacred Heart Parochial School in Dodge City. In the remainder of the report, Sacred Heart Parochial School will be referred to as "the parochial school," or "the private parochial school."

The Kansas State Department of Education (KSDE) allows for a 30-day timeline to investigate a complaint from the date in which it was filed. A complaint is considered filed on the date in which it was received by KSDE. In this case, the KSDE initially received the complaint on April 1, 2024 and the 30-day timeline ends on May 1, 2024. It is noted that this investigation required only document review so was completed early.

Evidence Reviewed

During the investigation, the Complaint Investigators Donna Wickham and Lori Noto reviewed all evidence and documentation, which was provided by both the district and the family. The following documentation provided by the family and district and information were used in consideration of the issues:

1. Individualized Education Plan, dated November 21, 2022.
2. Individualized Education Plan, dated November 15, 2023.
3. Individualized Education Plan, dated November 28, 2023.
4. Emails between mother and assistant coop director, dated between February 22, 2024 at 10:07 a.m. and February 23, 2024 at 12:42 p.m.
5. Draft Individualized Education Plan, dated March 20, 2024.

6. Prior Written Notice for Identification, Special Education and Related Services, Educational Placement, Change in Services, Change in Placement, and/or Request for Consent 1 (PWN) dated March 20, 2024, signed consent March 30, 2024 for compensatory minutes only.
7. PWN 2, dated March 20, 2024.
8. PWN 3, dated March 20, 2024.
9. PWN 4, dated March 20, 2024.
10. PWN 5, dated March 20, 2024 signed partial consent March 30, 2024.
11. PWN 6, dated March 20, 2024. Emails between mother and assistant coop director, dated between March 21, 2024 at 4:05 p.m. and March 22, 2024 at 9:17 a.m.
12. Handout titled, "3/20/2024 IEP Meeting Service Time" (84 minutes)
13. District Resolution dated April 12, 2024.
14. Math Problem solving rubric, undated.
15. Reading rubric, undated

Background Information

The student attends Sacred Heart Catholic School in Dodge City for her general education program and receives gifted education services with Dodge City Middle School. A previous child complaint titled, 24FC443-001 was recently completed. This complaint was filed to address concerns related to some of the corrective actions and two new issues. Special Education and Title Services has oversight with the issues related to corrective action, so these concerns were not investigated.

Issues Investigated

1. **ISSUE ONE**: USD #443, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide written input from the Reading Teacher at the November 15, 2023 and November 28, 2023 meetings.
2. **ISSUE TWO**: USD #443, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to write the PWN specifying the dates and times the district was proposing compensatory services as specified in the February 20, 2024 Child Complaint titled, 24FC443-001.

Issue One

USD #443, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide written input from the Reading Teacher at the November 15, 2023 and November 28, 2023 meetings.

Applicable Law

Federal regulations at 34 C.F.R. §300.321(a)(2) and K.S.A. §72-3404(u)(2) states, The public agency must ensure that the IEP Team for each child with a disability includes not less than one regular education teacher of the child (if the child is, or may be, participating in the regular education environment); The Kansas Special Education Process Manual (2018) states that “If the child has several general education teachers, at least one must attend the IEP meeting. However, it may be appropriate for more to attend. The school may designate which teacher or teachers will serve as IEP team member(s), taking into account the best interests of the child. The general education teacher who serves as a member of the child’s IEP team should be one who is, or may be, responsible for implementing a portion of the IEP. The school is strongly encouraged to seek input from the teachers who will not be attending the IEP team meeting.”

Analysis: Findings of Fact

The parents alleged that although the gifted teacher collected written input from the reading teacher prior to the November 15, 2023 and November 28, 2023 IEP meeting this written input was not provided to the parent. Instead, there was only a “verbal report of the ELA teacher’s comments.”

The district responded that they only had an obligation to include a general education teacher at each of the IEP meetings and attendance sheets demonstrate that a general education teacher was present. They further state there is no requirement for a required team member to submit written input to the IEP team when they are physically present at the annual IEP meeting. Furthermore, the reading teacher was present at the March 20, 2024 IEP.

The IEPs dated November 21, 2022 (in effect at the beginning of the 2023-2024 school year), November 15, 2023, November 28, 2023, and March 20, 2024 showed a general education teacher signed the attendance sheet.

Conclusion

According to federal regulations and Kansas statutes the district is obligated to include a general education teacher as a part of the student’s IEP team if the student is participating in general education classes. In this case the student is attending general education classes and has more than one general education teacher. It is the district’s obligation to provide a general education teacher, the parent may not request a specific teacher. It is found that the district met its obligation by having a general education teacher.

The assertion the parent made that the district is obliged to submit written documentation to the parent and IEP team is in the case when a required member of the IEP team is excused from the meeting. A general education teacher participated in each of the student’s IEP meetings, so the district was not obligated to collect and submit written teacher documentation from a specific teacher.

Based on the foregoing, *it is not substantiated* that USD #443 failed to provide written input from the Reading Teacher at the November 15, 2023 and November 28, 2023 meetings.

Issue Two

USD #443, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to write the PWN specifying the dates and times the district was proposing compensatory services as specified in the February 20, 2024 Child Complaint titled, 24FC443-001.

Applicable Law

Federal regulations and State statutes at 34 C.F.R. §300.503(a)(1) and 34 C.F.R. §300.503(a)(2) and K.S.A. §72-3432(a) and K.S.A. §72-3432(b) state that written notice must be given to the parents of a child with a disability a reasonable time before the public agency proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child; or refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child.

Analysis: Findings of Fact

The parent alleged that the PWNs that offered compensatory services did not contain the specific dates and times of the when the proposed compensatory services were offered. She stated that without the specific calendar dates and times on the PWN the family cannot consider and make a fully informed decision as to what her child would be missing in order that she might potentially accept the compensatory services.

The district stated that there is no requirement in either the regulation or the directives issued under the previous findings of 24FC443-001 that would require the specific service dates and times be documented on the prior written notice document.

Six Prior Written Notices, all dated March 20, 2024 were written following the Corrective Action resultant from 24FC443-001. Each PWN included a description of the proposed or refused action along with an explanation and other options considered and reasons for rejection. Additionally, each included a description of each record or report that was used as the basis of the proposal or refused action. Finally, each of the six PWNs included a statement that the parents have parental rights under the law along with sources for the parents to contact to assist in understanding their rights.

The PWNs addressing compensatory minutes included a total number of proposed minutes along with an offer of a specific number of minutes and the number of times offered each week, comparable to how service minutes are offered in a student's IEP.

Conclusion

Prior Written Notice is provided when the school proposes to initiate or change the identification, evaluation, or educational placement of the child, or to make a change to the provision of special education and related services (FAPE) to the child or refuses a parent's request to initiate or change the identification, evaluation, or educational placement of the child, or to make a change to the provision of special education and related services (FAPE) to the child.

The Prior Written Notice provided to parents for each proposed special education action must contain specific information:

- a description of the action proposed or refused;
- an explanation of why the school proposes or refuses to take the action;
- a description of each evaluation procedure, assessment, record, or report the school used as basis for proposed or refused action;
- a description of the other options the agency or IEP team considered and reasons why they were rejected;
- a description of any other factors relevant to the proposal or refusal;
- a statement that the parents have parental rights under the law; and
- sources for parents to contact to assist in understanding their rights. (K.S.A. 72-3432)

In reviewing the PWNs the district wrote and provided to the family, it is found that the district met its obligation. There is not an obligation to write the PWN with the level of specificity with dates and times. The decision of the specific dates and times are not to be documented in a PWN. In doing so, any departure from those dates and times for any reason would necessitate a new PWN.

Based on the foregoing, *it is not substantiated* that USD #443 failed to write the PWN specifying the dates and times the district was proposing compensatory services as specified in the February 20, 2024 Child Complaint titled, 24FC443-001.

Summary of Conclusions/Corrective Action

1. ISSUE ONE: A violation of 34 C.F.R. §300.321(a)(2) and K.S.A. §72-3404(u)(2) was not found, based on document review. Corrective action is not required.
2. ISSUE TWO: A violation of 34 C.F.R. §300.503(a)(1) and 34 C.F.R. §300.503(a)(2) and K.S.A. §72-3432(a) and K.S.A. §72-3432(b) was not found, based on document review. Corrective action is not required.

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)