

KANSAS STATE DEPARTMENT OF EDUCATION
SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT
FILED AGAINST
UNIFIED SCHOOL DISTRICT #497
ON MARCH 12, 2024

DATE OF REPORT APRIL 12, 2024

This report is in response to a complaint filed with the Kansas State Department of Education on behalf of -----, by his mother, ----- . In the remainder of the report, ----- will be referred to as “the student.” ----- will be referred to as “the complainant,” “the parent,” or “the mother.”

The complaint is against USD #497, Lawrence Public Schools. In the remainder of the report, USD #497 will be referred to as “the district”. The student attends Quail Run Elementary School and in the remainder of the report will be referred to as “the 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 March 12, 2024, and the 30-day timeline ends on April 12, 2024.

Evidence Reviewed

During the investigation, the Complaint Investigator, Dr. Donna Wickham, reviewed all documentation, which was provided by both the district and the complainant. Additionally, the complaint investigator talked with the mother on March 14, 2024 and Laura Basham, Director, Student Services on March 18, 2024. The complaint investigator attempted to talk with two former staff who worked with the student recommended by the complainant but attempts on March 28 and April 8, 2024 were unsuccessful. The following documentation and information were used in consideration of the issues:

1. Individualized Education Program dated May 8, 2023
2. Screenshot of text exchange between autism teacher and parent dated September 5, 2023, no time provided.
3. Screenshot 1 of text exchange between autism teacher and parent dated October 11, 2023, no time provided.
4. Screenshot 2 of text exchange between autism teacher and parent dated October 11, 2023, no time provided.
5. Screenshot 1 of text from parent to autism teacher dated October 12, 2023, no time provided.
6. Email from principal to school staff dated October 20, 2023 at 10:53 a.m.

7. PowerPoint presentation made to school staff on October 25, 2023 titled, "AAC: Strategies and Implementation" presented by district speech and language therapists.
8. Friday Flyer, school newsletter from the principal dated November 10, 2023 at 4:17 p.m.
9. Email between principal and parent dated November 15, 2023 between 7:11 a.m. and 11:32 a.m.
10. Email from mother to principal dated November 16, 2023 at 4:21 p.m.
11. Email between principal and parent dated November 16, 2023 at 4:56 p.m. and November 17, 2023 at 9:23 a.m.
12. Non-District Parentally Provided AT Devices Agreement signed by parent January 31, 2024.
13. Screenshot of text from autism teacher to parent dated February 26, 2024, no time provided.
14. Screenshot of text exchange between autism teacher and parent dated February 26, 2024 between 10:57 a.m. and 11:21 a.m.
15. Screenshot of text exchange between autism teacher and parent dated February 26, 2024 between 11:28 a.m. and 11:37 a.m.
16. Screenshot of text exchange between parent and principal dated February 26, 2024, no time provided.
17. Screenshot of text from parent to principal dated February 27, 2024, no time provided.
18. Screenshot of text exchange between parent and principal dated between February 27, 2024 and February 28, 2024, no time provided.
19. Email from case manager to parents dated March 1, 2024 at 4:10 p.m.
20. Screenshot of text exchange between parent and principal dated March 5 2024, no time provided.
21. Screenshot of text from parent to principal dated March 5 2024, no time provided.
22. Email exchange between parent and case manager dated March 5, 2024 between 7:20 a.m. and 2:27 p.m.
23. Email between Executive Director of Special Education and Student Services and parent dated March 5, 2024 between 8:58 a.m. and 10:17 a.m.
24. Email between parent and principal dated March 5, 2024 at 2:41 p.m. and 8:06 p.m.
25. Email from Director, Student Services to parent dated March 5, 2024 at 6:35 p.m.
26. Email from mother to Executive Director of Special Education and Student Services and Director, Student Services dated March 5, 2024 at 7:20 p.m.
27. Email from principal to parent dated March 8, 2024 at 2:51 p.m.
28. Email from school psychologist to parent dated March 12, 2024 at 1:09 p.m.
29. Notice of Meeting dated March 12, 2024
30. Email exchange between school psychologist and parent dated March 12, 2024 between 1:09 and 1:48 p.m.

31. Email exchange between school psychologist and parent dated March 18, 2024 between 9:31 a.m. and 12:44 p.m.
32. Notice of Meeting dated March 18, 2024
33. IEP Meeting Notes dated March 20, 2024
34. Email from case manager to parents dated March 23, 2024 at 4:10 p.m.
35. Email from principal to parent dated March 24, 2024 at 12:39 p.m.
36. Prior Written Notice for Evaluation or Reevaluation dated March 26, 2024
37. Prior Written Notice for Identification, Initial Services, Placement, Change in Services, Change of Placement and Request for Consent dated March 26, 2024
38. Progress Report with reported dates of May 17, 2023, October 13, 2023, December 20, 2023, and March 1, 2024
39. District response received March 29, 2024

Background Information

The student attends first grade at Quail Run Elementary in USD #497, Lawrence Public Schools. The student has been in the district for two years and previously received preschool services in another state. The student receives special education services under the eligibility category of autism. The student has multiple disabilities and uses a communication device and is learning to toilet train. He receives special education services in a specialized setting and in general education, occupational therapy, speech, and language therapy, adapted physical education, attendant care, extended school year, and special transportation services. Additionally, his IEP includes supplementary aids and supports.

Issues Investigated

1. **ISSUE ONE**: USD #497, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide a prior written notice after denying a parent request for an IEP meeting on March 7, 2024 during Parent Teacher Conferences.
2. **ISSUE TWO**: USD #497, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to follow the IEP during the **2023-2024** school year, specifically providing the student access to his communication device.

Issue One

USD #497, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide a prior written notice after denying a parent request for an IEP meeting on March 7, 2024 during Parent Teacher Conferences.

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 Friday Flyer school newsletter from the Principal stated, "Next Thursday marks the end of the third quarter at [school]. That means students will not have school next Friday, March 1st. Teachers will use that day to get ready for parent-teacher conferences on March 6th & 7th."

A text sent from the parent to the principal on March 5, 2024 showed a photo of her child's arm with a bruise and expressed concern. A second text was sent from the parent to the principal on March 5, 2024 stating concerns that supplies that the mother sent to the school for the student were being used with other students.

At 2:41 p.m. on March 5, 2024 the parent emailed the principal, "Requesting an emergency IEP meeting in place of parent teacher conference on Thursday @ 9a.m. I am going to bring an advocate & I can sign the waive (sic) my rights to 10 days." The principal responded at 8:06 p.m. stating "...we are happy to continue as planned at 9 AM on Thursday for [student's] conference, however, cannot put together a team IEP meeting in that time frame due to other scheduled meetings for conferences within the team. I think Thursday will be a great opportunity for us to touch base on what we discussed today on the phone. This will include how we will improve communication (based on your feedback) and send home ideas for things to do with [student], like homework."

An email from the director of student services to the parent on Mar 5, 2024, 6:36 PM responded to the parent's request for an emergency IEP meeting. "On Thursday, the team may want to schedule an IEP meeting for the near future to address your concerns and spend more time discussing [student's] progress. Parent/teacher conferences are typically shorter time slots and not all members of an IEP team are present. Therefore, the meeting on Thursday may be the beginning to start working through questions/concerns."

An email from the principal to the parent on March 8, 2024 at 8:52 a.m. reiterated that the meeting held during the parent/teacher conference was a start and that an IEP meeting with the IEP team will be scheduled on Wednesday, March 20, 2024 after spring break.

The director of student services stated in a phone interview with the complaint investigator on March 18, 2024 that the district did not deny an IEP meeting but was unable to assemble all of the IEP team members on the day requested by the parent because it was a parent-teacher conference day, and all staff were allocated to meeting that responsibility.

Two Notices of Meetings were provided to the parent dated March 12, 2024 and March 18, 2024 for an IEP meeting on March 20, 2024 at 1:00 p.m. at the school.

Minutes dated March 20, 2024 showed an IEP meeting was held March 20, 2024.

Conclusion

The Prior Written Notice is a procedural safeguard provided to a parent before the district makes changes to identification, evaluation, educational placement or provision of special education and related services (FAPE) of the child. In this case the complaint investigator had to determine if the parent's request for an emergency IEP meeting constituted any one of these types of changes. Interview and review of documentation provided by the family and district show that the request for the emergency IEP meeting was in response to a parent's concern about her child's treatment and concern about misuse of student's supplies. It was not found that the district was proposing a change to identification, evaluation, educational placement or provision of special education and related services (FAPE). Based on the foregoing, *it is not substantiated* that USD #497 failed to provide a prior written notice after denying a parent request for an IEP meeting on March 7, 2024 during Parent Teacher Conferences.

Issue Two

USD #497, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to follow the IEP during the **2023-2024** school year, specifically providing the student access to his communication device.

Applicable Law

Federal regulations at 34 C.F.R. §300.323(c)(2) require school districts to ensure that as soon as possible following the development of the IEP, special education and related services are made available to the child in accordance with the child's IEP. K.A.R. §91-40-16(b)(2) further specifies those services for which written consent has been granted as specified by law are implemented not later than 10 school days after parental consent is granted unless reasonable justification for a delay can be shown.

Analysis: Findings of Fact

The parent alleged that the student was denied access to his personal communication device at recess and that if the device needs recharging, he did not have access to it. The parent stated that the student's device was purchased through insurance and goes between home and school.

The district responded that the parent provided and requested the school to utilize a parentally-owned iPad with TouchChat and that it has provided the student access throughout the day. The school agreed to use this privately-owned device in lieu of one provided by the district. The district further responded that the student's IEP does not include AAC as a necessary service, however the IEP does discuss how AAC use is an option along with other communication strategies (multi-modal communication goal and present levels). The school's device (iPad with TouchChat) was used in a comparable manner prior to the parent supplying the parent-owned iPad. The only change has been the owner of the device, as student access and use of the device has been consistently provided.

The May 8, 2023 IEP (in effect during the 2023-2024 school year) Present Levels document that the student is working to increase "his use of icons, signs (ASL), and gestures to communicate with staff and peers...benefits from the use of visual communication supports including low-tech visual icons and/or a speech-generating device (he has been using the teacher's iPad with TouchChat in his Kindergarten specialized classroom) to interact in his learning environment. Without these supports, [student] does not have a reliable way to communicate his wants, needs, and ideas throughout the school day." Further, he has "been introduced to different forms of augmentative and alternative communication, including a speech-generating device. [Student] is starting to demonstrate emerging communication skills using the device." and that the box is checked that assistive technology needs were considered by the IEP team.

The May 8, 2023 IEP shows the student has a communication goal, "When participating in structured language tasks, [student] will be able to use multi-modal communication (e.g., AAC device, word approximation, sign) to make choices and request preferred items or activities at 4 out of 5 opportunities with no more than 1 prompt by end of the IEP as measured by Observation." and that "all adult support (special education, general education, related services, paraprofessional, caregivers, and other consistent adults in [student's] day will be trained on how to facilitate specialized instruction and interventions, including the use of AAC to model and teach [student's] target vocabulary throughout the instructional day." Finally, the student receives 15 minutes of pullout speech/language services 2 days every week to support program development and material design.

The principal confirmed that the student's teacher and paraeducators attended October 24, 2023 training conducted by district speech and language therapist titled, "ACC: Strategies and Implementation" and used collaboration time to discuss the student's communication.

The parent signed a "Parentally Provided AT Device Agreement" form on February 3, 2024 for the district to use the non-district AT device with the student.

In response to an email question from the complaint investigator the district responded, "[student's] private device came back and forth to school in his backpack daily. This was arranged through verbal conversations with the parent. The staff reported that this did occur daily and they do not recall a day the device did not come to school or was not sent home. They did report that there was an occasional day that the battery on [student's] private device ran out during the school day. When this happened, they swapped his device with a district device that was charged and had the same app (TouchChat). The team also discussed this with the parent at the meeting on March 20th."

The March 20, 2024 IEP meeting minutes document that the IEP Team discussed the student's access to his non-district AT device throughout the school day including recess. The notes recorded the decision that "if the non-district device is broken, not charged, etc., the student will have access to a district issued device with the TouchChat App as well as the teacher device that also has TouchChat. It is recorded that there have been a few occasions where the non-district device lost battery power during the school day and the school device was provided to the student to ensure he had access to a familiar communication tool."

The Progress Notes spanning May 17, 2023 through March 1, 2024 document the student's use of the AAC device.

Conclusion

It is found through documentation review and interview with the district that the student communication is through multiple means and the iPad with TouchChat is one important method. Documentation showed that the student had access to the iPad with TouchChat and other means during the school day and further that if the student-owned device is broken the district substituted a district device. Based on the foregoing, it is not substantiated that USD#497 failed to follow the IEP during the 2023-2024 school year, specifically providing the student access to his communication device.

Summary of Conclusions/Corrective Action

1. **ISSUE ONE:** A violation of 34 C.F.R. §300.503(a)(1), 34 C.F.R. §300.503(a)(2), K.S.A. §72-3432(a) and K.S.A. §72-3432(b) was not found, based on documentation review and interview. Corrective action is not required.
2. **ISSUE TWO:** A violation of 34 C.F.R. §300.323(c)(2) and K.A.R. §91-40-16(b)(2) was not found, based on documentation review and interview. 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)