

KANSAS STATE DEPARTMENT OF EDUCATION
SPECIAL EDUCATION AND TITLE SERVICES
REPORT OF COMPLAINT
FILED AGAINST
UNIFIED SCHOOL DISTRICT #233, OLATHE PUBLIC SCHOOLS
ON APRIL 15, 2024
DATE OF REPORT MAY 15, 2024

This report is in response to a complaint filed with the Kansas State Department of Education against USD #233 Olathe Public Schools on behalf of ----- by his mother ----- . In the remainder of the report, ----- will be referred to as “the student.” ----- is the student’s mother and in the remainder of the report she will be referred to as “the complainant,” “the parent,” or as “the mother.”

The complaint is against USD #233 Olathe Public Schools. In the remainder of the report, USD #233 will be referred to as “the district.” The student attends Oregon Trail Middle School and in the remainder of the report this middle school 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 April 15, 2024 and the 30-day timeline ends on May 15, 2024.

Evidence Reviewed

During the investigation, the Complaint Investigators Donna Wickham reviewed all evidence and documentation, which was provided by both the district and the parent. Additionally, the complaint investigators contacted the district and family several times by phone and email to clarify evidence. The complaint investigator contacted the mother by phone on April 20, 2024 and April 22, 2024 and by email to clarify specific points. The complaint investigator interacted with the district by phone and email to clarify evidence and a phone interview was conducted with Nicholas Hofmeier, Case Manager /Resource Teacher; Johnathan Lynk - Building Principal; Matt Kunstman - Special Services Coordinator and Ashley Niedzwiecki - Assistant Director of Special Services on May 7, 2024. The following documentation and information were used in consideration of the issues:

1. Individual Education Program dated January 19, 2024
2. Email exchange between mother and special education resource teacher dated between April 12, 2024 at 2:52 p.m. and April 15, 2024 at 7:55 a.m.
3. Kansas City Zoo and Aquarium Field Trip Permission Form
4. Gradebook Copy for student Quarter 4 dated March 22, 2024, through April 16, 2024

5. Student Period Attendance for 2023-2024 school year dated through April 17, 2024.
6. Email exchange between mother and complaint investigator dated May 4, 2024 between 4:02 and 5:09 p.m.

Background Information

The student is a twelve year old seventh grader at the district middle school where he is eligible for special education and related services under the category of speech/ language. The student has a medical diagnosis of ADHD, and the parents reported at the January 17, 2024 IEP that he does not take medication. He receives 50 minutes of direct special education service outside of the regular education classroom (resource room) three days every week for 50 minutes where he either is taught information that will help him to better learn the content being taught in his core classes or to review core curriculum. He additionally receives 25 minutes of special education services from a speech language pathologist 2 days every week. Finally, he receives 25 minutes of social work services 1 day every week and 15 minutes of social work services 1 day every week. The district explained that some of the social work services are provided through a lunch bunch club to learn social skills. He receives five accommodations for instruction, six academic accommodations and social skills training and daily check-ins are listed as social emotional accommodations.

Issues Investigated

ISSUE ONE: USD #233, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to implement the student's IEP on April 17, 2024, specifically delivering service minutes when service providers were out of the building and the student was left behind.

ISSUE TWO: USD #233, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide the student access to nonacademic and extracurricular activities on April 17, 2024.

Issue One

USD #233, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to implement the student's IEP on April 17, 2024, specifically delivering service minutes when service providers were out of the building and the student was left behind.

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 when the parent learned that her student would not be allowed to attend a field trip on April 17, 2024 two days earlier on April 15, 2024. She stated that her son was told he will have to sit in a room all day while the rest of the students attend the trip. The parent stated she was led to believe that the student's special education teacher will be on the field trip so won't receive his special education service that day.

The district responded that on April 17, 2024 the seventh grade class was scheduled to attend a field trip at the Kansas City Zoo and Aquarium. In preparation for this field trip all parents were asked to sign a permission slip, which in part, qualifies who may attend by stating, "7th Grade Students with passing grades and in good standing". The student's parent did sign this form. Unfortunately, according to the student's grade reports, the student had an F in math on the day of the field trip, and therefore did not meet the qualifications required to attend. The student and the parent were informed of this decision. The policy was applied to all students. On April 15, 2024, the parent was notified that the student was not a student in good standing (due to the student's F in math) and would not be permitted to attend the field trip, despite the student not having any missing work. Regardless attendance records show that the student was called out as "ill" by the parent for the entire day on April 17, 2024, the day of the field trip. Therefore, the student did not miss any service minutes due to his ineligibility to attend the field trip because the parent unilaterally called the student out sick on the day of the field trip, negating the district requirement to provide services on that day.

The period attendance for the 2023-2024 school year showed that the student was absent on April 17, 2024. The mother reported in an email on May 4, 2024 to the complaint investigator that she "called him in because I didn't want him sitting in a room all day without even being serviced."

Conclusion

Based on the foregoing, *it is not substantiated* that USD #233 failed to implement the student's IEP on April 17, 2024, specifically delivering service minutes when service providers were out of the building and the student was left behind. Although the district would be obligated to provide special education services when the student remained in the school building or if the student's case manager was absent, the student was absent on that day, so the district was under no obligation to provide the services or demonstrate their capacity or plan to provide the services.

Issue Two

USD #233, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide the student access to nonacademic and extracurricular activities on April 17, 2024 due to an earned grade.

Applicable Law

Kansas state statutes at K.S.A. §72-3429(4)(B)(1) states the IEP for each exceptional child shall include a statement of the program modifications or supports for school personnel that will be provided for the child to participate in extracurricular and other nonacademic activities.

Federal regulations at 34 C.F.R. §300.117 and K.A.R. §91-40-3(b)(1) states that each agency shall provide nonacademic and extracurricular services and activities in the manner necessary to afford children with disabilities an equal opportunity for participation in those services and activities, including the provision of supplementary aids and services as determined to be necessary by the child's IEP team.

Analysis: Findings of Fact

The parent alleged that the student was not able to attend a 7th grade field trip because he did not earn a passing grade in math. She stated that he has an IEP goal for math and is not in remedial math because it is not offered in spite of her son performing at least two grade levels below. She reported he was not missing any work and the grade is based purely on ability and the teacher weights grades making tests a higher percentage than daily work.

The district responded that the student received his accommodations written in his current IEP, but there is nothing in the student's IEP which requires the district to modify the student's grades.

The January 19, 2024 IEP verifies that the student's math performance is below grade level and an IEP goal is written to improve performance. The IEP further includes accommodations for instruction, classroom and homework assignments and testing. No accommodations for grading are recorded in the student's IEP.

Instruction	Assignments	Testing
Frequent checks for understanding	Extended time to complete work	Extended time
Verbal and visual cues regarding directions and new information	Shortened assignments	Take test in a quiet, non-competitive setting
Positive reinforcement	Read aloud	Reduce number of choices
Allow additional wait time		Text to Speech directions/ test items
Preferential Seating		Reduce number of test items
Adult support math and ELA		

The district reported during the interview on May 7, 2024 that the student had taken a test that needed to be retaken to show his work and was provided two additional weeks to study

prior to retaking. The student retook the test and did not pass. This resulted in the student not earning a passing grade.

The field trip permission slip stated that students not earning a passing grade or in good standing would not be allowed to eligible for the field trip.

An email sent by the mother on April 12, 2024 stated, *"Good Afternoon Can you check and make sure [student] math tests are being modified? Il thought that was part of his accommodations. He is really struggling with the math. Although I realize he can be resistant I do think the pace is what the challenge is. He's also very worried about his grades and not being able to attend the field trip next week. He has an f in math but it's test scores not missing work. Can they keep kids with IEPs from field trips for academics?"* to which the student's case manager replied later that day, *"He does receive accommodated assessments. He also had access to formulas and a calculator on this last assessment. As for the pace I have been in [math teacher's] room to co-teach and she does a good job with pacing. I know [student] had been resistant to help throughout much of the year, but from what I had understood he was doing better when getting help from adults—I would just encourage him to continue to be advocating for himself. This morning it was a battle of me trying to get him to accept doing missing work. [Student] has had opportunities to seek assistance from his teachers and myself and has not been doing so. I have tried telling all my students that they can come to me during resource, before school starts, and after school. We still have a significant amount of the semester left and I am more than happy to assist [student] in any way possible. As a 7th grade group the decision was to only allow students in good standing, and those that did not have any F's. Students have been reminded repeatedly in their classes of this for the last few weeks. Unfortunately, there are a few that don't get to go the Zoo trip. Teachers were accepting work up until the end of the school day and have been entering material as it has come in. However, tough as it is, there are a few who don't get to attend."*

On April 15, 2024, the student's case manager contacted the parent again, stating, *"Although he does not have any missing assignments, he is not considered eligible due to the "F" in math. [Student] had 2 opportunities on the assessment (one in which he was caught cheating). It was repeatedly stated to the students that they would not be able to attend if they had an 'F.'"*

Conclusion

This issue was determined to be based in the district's implementation of the student's accommodations since the student was not eligible to attend the field trip due to a failing grade, rather than the student's access to a fieldtrip (34 C.F.R. §300.117 and K.A.R. §91-40-3(b)(1)). It is found that the district demonstrated that the accommodations were implemented for the student to earn passing grades. Based on the foregoing, *it is not substantiated* that USD #233 failed to provide the student access to nonacademic and extracurricular activities on April 17, 2024.

Summary of Conclusions/Corrective Action

1. **ISSUE ONE:** 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 interview and attendance records. Corrective action is not required.
2. **ISSUE TWO:** A violation of K.S.A. §72-3429(4)(B)(1) was not found, based on review of evidence 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)