

KANSAS STATE DEPARTMENT OF EDUCATION
SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT
FILED AGAINST
UNIFIED SCHOOL DISTRICT #402
ON OCTOBER 2, 2023

DATE OF REPORT NOVEMBER 1, 2023

This report is in response to a complaint filed with the Kansas State Department of Education on behalf of ----- and ----- by their father, -----. In the remainder of the report, ----- will be referred to as "Student A" and ----- will be referred to as "Student B." ----- be referred to as "the complainants" or "the parents." ----- will be referred to as "the father" and ----- will be referred to as "the mother."

The complaint is against USD #402, Augusta Public Schools. In the remainder of the report, USD #402 will be referred to as "the district". Butler County Interlocal #638 is the Special Education Cooperative providing special education services to USD #402 and in the remainder of the report will be referred to as the "coop".

The Kansas State Department of Education (KSDE) allows for a 30-day timeline to investigate a complaint from the date on 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 complaints on October 2, 2023, and the 30-day timeline ends on November 1, 2023.

Evidence Reviewed

During the investigation, the Complaint Investigator, Dr. Donna Wickham interviewed the mother and Coop Director. She additionally reviewed all evidence and documentation provided by both the district and the complainant. The following documentation and information were used in consideration of the issue(s):

1. Student A Individualized Education Program dated December 2, 2022
2. Student B Individualized Education Program dated December 2, 2022
3. District 2023-2024 Calendar, board approved March 13, 2023
4. Emails between Father and Assistant Coop Director dated October 4, 2023 at 9:23 PM and October 6, 2023 at 5:44 PM.
5. District Resolution Proposal dated October 9, 2023
6. District Response to Formal Complaint received October 16, 2023
7. Emails between the Complaint Investigator and Coop Director dated between October 15, 2023 at 1:50 PM and October 25, 2023 at 8:03 AM.
8. Student A Attendance Overview 23-24 Semester 1

9. Student B Attendance Overview 23-24 Semester 1

Background Information

Kansas has statutes and regulations regarding IEPs, which also include children identified as gifted. Student A is currently a 10th grader and attends the High School in the district. He qualifies for special education services under the exceptionality category of gifted. Student B is currently an 8th grader and attends a middle school in the district. He qualifies for special education services under the exceptionality category of gifted. Both Students have received services through the coop for 30 minutes five days every week.

Issues Investigated

1. **ISSUE ONE:** USD #402, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to follow each of the two student's IEP, specifically, provision of service minutes during the 2023-2024 school year.
2. **ISSUE TWO:** USD #402, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to appropriately respond to a parent request for an IEP meeting for each of the two students during the 2023-2024 school year.

Issue One

USD #402, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to follow each of the two student's IEP, specifically, provision of service minutes during the 2023-2024 school year.

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 alleges that while both Student A and Student B are each supposed to be provided 30 minutes of services every day, they are each receiving 30 minutes of services once a week this school year.

The District acknowledges that the Gifted Facilitator resigned from the position and despite many efforts to hire for the position the Coop has not been able to hire a qualified

replacement. The District further states that they are working with the Coop and scheduled for each Student to have IEP management and at least one day per week of gifted services with the Gifted Facilitator. They acknowledge this is a reduction from 30 minutes, five days every week. To make up for the diminished minutes the Student A is provided the opportunity to use ACE time to collaborate with other gifted students on Monday, Tuesday, and Fridays. ACE is a high school option for students to examine college and career readiness activities. Student B has the opportunity to read or do enrichment activities in lieu of the daily "tier intervention class time.

Student A's IEP dated December 2, 2022 documents the Student is to receive 30 minutes of Gifted Instruction services 5 days every week during study skills in the special education room.

Student B's IEP dated December 2, 2022 documents the Student is to receive 30 minutes of Gifted Instruction services 5 days every week during study skills in the special education room.

In the District's response letter dated October 9, 2023 the Coop's Gifted Facilitator mailed a letter of introduction to the parents and a request for parents to sign a Prior Written Notice agreeing to the reduced time and on August 24, 2023 mailed a letter to parents with additional forms regarding the reduction in services.

The District and Parents agree they did not consent to the change in time of services for Student A or Student B.

According to notes from the October 9, 2023 resolution meeting between the Parents and Coop Director the concerns are not about academic progress, but about the social emotional impact of not having gifted services five days every week. They stated they were concerned their children are bored, might develop a dislike for school and might not have as much access to like-minded peers.

The 2023-2024 District School Calendar shows that Student A's first day of school would be August 17 and Student B's first day of school would be August 18.

The 2023-2024 District School Calendar shows no school was held on September 4 and 18.

The District and Parent agree Student A and Student B are each receiving 30 minutes of Gifted Instruction services 1 day every week and are offered time in ACE (Student A) and tier intervention (Student B) to work on gifted activities.

Conclusion

While the District has made efforts and met with the parents in response to the absence of a District gifted facilitator the district has not provided the service minutes written in Student A or Student B's IEP. The District reports they continue to explore options for meeting the service minutes and have a potential interviewee upcoming. The district and parents may consider reevaluating each student to determine the appropriate level of services needed, considering the social/emotional impact and need for enrichment activities. Based on the foregoing, *it is*

*substantiated*that USD #402 failed to follow each of the two student's IEP, specifically, provision of service minutes during the 2023-2024 school year.

Issue Two

USD #402, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to appropriately respond to a parent request for an IEP meeting for each of the two students during the 2023-2024 school year.

Applicable Law

According to federal regulations at 34 CFR §300.322 and State Statutes at K.S.A. §72-3429(f), Request by Parent or School Staff for IEP Meeting; although the school is responsible for determining when it is necessary to conduct an IEP meeting, the parents of a child with an exceptionality have the right to request an IEP meeting at any time. The child's teacher or other school staff may also propose an IEP meeting at any time they feel the IEP has become inappropriate for the child and revision should be considered.

According to federal regulations at 34 CFR §300.322(a)(1) and (2) and state regulations at K.A.R. §91-40-17(a)(1) and (2) each agency shall take steps to ensure that one or both of the parents of an exceptional child are present at each IEP meeting or are afforded the opportunity to participate to include the following: (1) Scheduling each meeting at a mutually agreed-upon time and place and informing the parents at least 10 days in advance of the meeting.

Analysis: Findings of Fact

The parent alleges that the school has not initiated any conversation on the lack of services provided. In the complaint it is written, "I have emailed them and have been given excuses. When I did not consent to the lack of services provided, the school principal ends the conversation. We formally requested an IEP meeting in writing about 10 days ago from the date of the complaint on October 3, 2023 and have yet to hear back from the school."

The district responded that the team was not aware that the parent had requested a meeting and were not able to locate a parent request for a meeting. Upon learning of the meeting request via the Child Complaint they contacted the father to schedule a meeting and did in fact hold a meeting. They reported they later located the meeting request dated September 20, 2023 in the mailed IEP Amendment. They assured the parent that they would have scheduled a meeting if they had known of the request. They stated that they have since spoken with the IEP manager to ensure that this confusion could not happen again.

According to the District Response and interview with the Coop Director on August 15, 2023 the Gifted Facilitator mailed a letter to the parents with a Prior Written Notice to reduce

services for Students A and B. On August 18, 2023, the High School Principal responded to an email from the father and offered a meeting but did not receive a reply.

On August 24, 2023, the Gifted Facilitator mailed a letter to all parents with forms regarding the reduction in services for Students A and B as no response to the August 15, 2023 PWN was received from the family.

On about August 26, 2023 the district received the August 11, 2023 PWN from the parents marking they did not consent to the change in the reduction in service for either Students A or B.

The District reported on September 12, 2023, an IEP amendment was sent to parents for each student since only the PWN was previously returned. The returned IEP amendment showed the parents signed the amendment on September 20, 2023, checking the box indicating "I/we do wish to convene an IEP meeting".

According to the October 9, 2023 District response, On October 3, 2023 at approximately 3:00 p.m., the Coop Assistant Director called the parent to schedule a meeting in response to the formal complaint. By report, the parent did not answer, and a voicemail was left. By report, on October 4, 2023 at approximately 11:30 a.m., Coop Assistant Director and the Coop Director called again tried to call to schedule a meeting with the parent, again leaving a voicemail.

The Coop Director then sent the father an email on October 4, 2023 at 11:59 a.m. stating "We would like to meet with you as soon as possible to discuss your concerns. Can you please give us some times/days you are available? If you prefer to visit by phone, you are welcome to call my office at 316-775-6904." On October 4, 2023 at 9:23 pm, the Father emailed Coop Assistant Director stating "I am sorry, I have not called you back. I work 3rd shift and sleep during regular business hours. It is best to reach me via email."

Between October 5 - 6, 2023 the Parent and Assistant Coop Director finalized a meeting time for October 9, 2023 at 8:30 am.

On October 9, 2023 at 8:30 a.m. an IEP meeting was held between the Parents and District IEP team members to discuss Student A and Student B's missed services and services moving forward, but no changes were determined. The Coop Director stated that the IEP team members were present at the meeting and minutes were recorded. No changes to the IEP were made.

In this case the parent made a request for an IEP meeting as part of an IEP amendment on September 20, 2023 and the District first Coop first attempted to schedule the meeting on October 3, 2023 – 9 school days from the September 20, 2023 parent request. In Kansas it is generally accepted that a district has 15 days to respond.

The IEP meeting was held on October 9, 2023. A waiver of 10 days' notice of the meeting was not signed, however both parents attended the meeting and participated in setting the meeting dates, so a waiver of the notice is implied.

Conclusion

Based on the foregoing, *it is not substantiated* that USD #402 failed to respond to a request for a meeting in a reasonable timeframe and provide notice of the meeting for parent participation.

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 found, based on review of Student A and Student B IEPs, Student attendance, District School Calendar, and interviews. Corrective action is required (as follows):
 - a. CORRECTIVE ACTION:
 - i. USD #402 shall reconvene Student A's IEP team and will offer a minimum of 210 minutes of gifted services as described in the December 2, 2023 IEP as compensatory services for failing to implement the student's IEP during the 2023 school year. USD #402 shall provide SETS with a copy of the written plan for providing the compensatory services offered and the parent's decision on whether to accept the offer, in whole or in part, no later than 10 days from the date of the IEP team meeting.
 - ii. Date due: No later than December 15, 2023
 - iii. USD #402 shall reconvene Student B's IEP team and will offer a minimum of 240 minutes of gifted services as described in the December 2, 2023 IEP as compensatory services for failing to implement the student's IEP during the 2023 school year. USD #402 shall provide SETS with a copy of the written plan for providing the compensatory services offered and the parent's decision on whether to accept the offer, in whole or in part, no later than 10 days from the date of the IEP team meeting.
 - iv. Date due: No later than December 15, 2023
2. **ISSUE TWO:** A violation of 34 CFR §300.322, 34 CFR §300.322(a)(1) and (2) and State Statute at K.S.A. §72-3429(f) and state regulations at K.A.R. §91-40-17(a)(1) and (2) was not found, based on review of documents. 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)