

KANSAS STATE DEPARTMENT OF EDUCATION
SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT
FILED AGAINST
UNIFIED SCHOOL DISTRICT #382
ON NOVEMBER 9, 2023

DATE OF REPORT DECEMBER 9, 2023

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” or “the mother.”

The complaint is against USD #382. USD #382 contracts with the South Central Kansas Special Education Cooperative #605 (SCKSEC) and the student attends Haskins Learning Center a day school operated by SCKEC. In the remainder of the report, USD #382, SCKSEC or the day school will be referred to as “the district”.

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 November 9, 2023 and the 30-day timeline ends on December 9, 2023.

Evidence Reviewed

During the investigation, the Complaint Investigator, Dr. Donna Wickham interviewed the mother on November 11, 2023 and November 28, 2023; the student’s case manager, Ms. Marci Adams, and Mr. Dakota Oller, another Haskins Learning Center school teacher on December 5, 2023 and Officer James Sheldon of the Pratt Police Office on November 27, 2023. Dr. Wickham reviewed all evidence and documentation which was provided by both the district and the mother. Although additional information was provided and reviewed by the Complaint Investigator the following documentation and information were used in consideration of the issues:

1. Individualized Education Plan, initiation date December 10, 2022
2. Vanderbilt Assessment Scale, Follow-up: ADHD Toolkit Teacher-Informant Form, administered March 7, 2023, April 11, 2023
3. Emotional Outburst Inventory (EMO-I) administered March 7, 2023
4. Release of Information/Consent to Communicate between student’s medical doctors and IEP team members signed by parent dated April 18, 2023
5. Grades and Absences for Grade 3 Reading, Math, Centers, Specials, dated May 23, 2023
6. IEP Team Meeting Minutes, dated July 11, 2023

7. Student behavior pie chart dated August – November 2023
8. IEP Zoom meeting invite for August 8, 2023 from 9:00 – 9:45 AM
9. Prior Written Notice for Identification, Special Education and Related Services, Educational Placement, Change in Services, Change in Placement, and/or Request for Consent, dated August 8, 2023
10. Consent to Invite Representative of Noneducational Agency (CDDO) to IEP Meeting signed by parent dated August 22, 2023
11. IEP team meeting minutes dated August 23, 2023
12. School psychologist notes and emails compiled in document titled, [student initials] Documentation" dated between August 31, 2023 and November 3, 2023
13. IEP team meeting minutes dated September 14, 2023 at 12:10 PM
14. Student journal assignment dated September 25, 2023, September 26, 2023, October 10, 2023, October 16, 2023, October 25, 2023, November 2, 2023
15. Kaufman Test of Educational Achievement, Third Edition (KTEA™-3) Standard Report, administration date September 28, 2023
16. Learning Center Incident Report, dated October 5, 2023 resulting in parent coming to school and meeting with principal.
17. Letter to parents informing of Emergency Safety Intervention (ESI) dated October 5, 2023.
18. Learning Center Incident Report 1, dated October 6, 2023 resulting in student de-escalating in office.
19. Learning Center Incident Report 2, dated October 6, 2023 resulting in principal calling parent.
20. Learning Center Incident Report, dated October 10, 2023 resulting in parent coming to school and picking up student.
21. Letter to parents informing of Emergency Safety Intervention (ESI) dated October 10, 2023.
22. Learning Center Incident Report, dated October 11, 2023 resulting in 2 day OSS
23. Letter to parents informing of Emergency Safety Intervention (ESI) dated October 11, 2023.
24. Psycho-Educational Report, dated October 16, 2023
25. Letter to parents informing of Emergency Safety Intervention (ESI) dated October 19, 2023, restraint times of 12-12:03; 12:03-12:06;12:06-12:09; 12:09-12:12; and 12:12-12:14
26. Learning Center Incident Report 1, dated October 24, 2023 resulting in police intervention.
27. Letter to parents informing of Emergency Safety Intervention (ESI) dated October 31, 2023, interventions offered at three minute intervals between 11:09 – 11:40 AM

28. Learning Center Incident Report, dated November 2, 2023 resulting in student suspension.
29. Eight photos showing property and staff injury from November 2, 2023 incident.
30. Video of November 2, 2023 staff interaction following behavioral incident 1 minute, 8 seconds.
31. Video of November 2, 2023 staff interaction following behavioral incident 37 seconds.
32. [Student] Crisis Development Model (Integrated Experience), undated
33. Emails between mother and Director of Special Education dated November 3, 2023 at 3:12 PM through 6:26 PM
34. Email between Director of Special Education, mother and father dated November 9, 2023 at 9:42 AM through 9:55 AM
35. Notice of Special Education Meeting, dated November 10, 2023 to discuss changes to the IEP and meeting on Manifestation Determination review.
36. Resource teacher notes describing November 11, 2023 behavior incident.
37. Emails between mother and Cooperative School Psychologist dated between November 14, 2023 at 9:57 PM and November 15, 2023 at 4:40 AM
38. Emails among IEP team members including parents dated November 16, 2023 between 4:04 PM and 5:30 PM
39. Email from school psychologist to case manager and Director of Special Education dated November 20, 2023 at 1:30 PM
40. WISC® -V Wechsler Intelligence Scale for Children® -Fifth Edition Score Report, administration date November 20, 2023
41. Email between complaint investigator and Director of Special Education between December 5, 2023 at 5:04 PM and December 7, 2023 at 1:44 PM
42. SCKSEC Emergency Safety Intervention Parent Information, undated
43. Images of student binder, first-then graphic, student classroom rules, binder with “to do” and “done” sections, student word cards, student choice board with manipulatives, math “manipulatives,” sensory toys, array of supports including headphones, student timer, visual board, visual schedule (with staff and peers), student sensory picture cards, undated.

Background Information

The student attends a behavior day school administered by the special education cooperative that provides services to the students in the district. The day school is a specialized placement for students with significant behavioral and emotional disabilities. The program consists of individualized and group instruction in the following areas: 1) safety, 2) essential social skills, 3) self-advocacy, 4) knowledge of community resources, 5) educational planning – transitioning back to home school, 6) self-help, 7) self-regulating skills, 8) emotional skill training, 9) appropriate academic instruction.

The student began receiving early childhood special education services at age three in the district. He continued to receive special education services when he transitioned to kindergarten at Southwest Elementary School during the 2019-20 school year. At the end of the first grade, the student was placed in a 45 day interim alternative educational setting (IAES) at Haskins Learning Center as a result of physical aggression towards a staff member.

On August 24, 2021, the district provided the parent with PWN to change the student's placement to the separate day school during second grade and the student primarily attended Haskins Learning Center during second, third, and fourth grades where he received specialized instruction, speech therapy, paraeducator support, counseling, occupational therapy, and autism support services. The student has been medically diagnosed with ADHD, combined type, and Autism spectrum disorder.

Issues Investigated

1. **ISSUE ONE:** *In violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), the USD #382 school staff failed to inform police officers that the student was eligible for special education services when called for behavior at the school during the 2023-2024 school year.*
2. **ISSUE TWO:** USD #382, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to follow the student's IEP, specifically the accommodation of chunking of assignments or assessments and shortening assignments and assessments up to 50% without changing the content to ensure minimal frustration on November 2, 2023 which resulted in the student's behavior to escalate and result in staff and student injury.
3. **ISSUE THREE:** USD #382, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide documentation of student discipline (seclusion, calling police, OSS) during the 2023-2024 school year.

Issue One

In violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), the USD #382 school staff failed to inform police officers that the student was eligible for special education services when called for behavior at the school during the 2023-2024 school year.

Applicable Law

Federal regulations at 34 C.F.R. §300.622(a) state that parental consent must be obtained before personally identifiable information is disclosed to parties, other than officials of participating agencies, such as transition agencies and private schools. FERPA regulations, however, allow some exceptions to the requirement to obtain parent consent before releasing records. Specifically, FERPA allows the school to release records to authorized individuals in certain situations, such as in connection with a health or safety emergency, if knowledge of the

information is necessary to protect the health or safety of the student or other individuals (34 C.F.R. 99.31(a)(10)).

Analysis: Findings of Fact

The parent alleged that on October 24, 2023 that the local police were not informed that the student had a disability when they were called in response to the student eloping from the school following a behavioral episode at the school. She stated that because the police were not informed of his disability their treatment of the student continued to escalate the student. Later, during an interview the parent clarified that her concern was that the police were not aware of strategies to de-escalate her student's behavior that were a part of his disability.

The district responded that the student attends a behavior day school, located on the grounds with a special education cooperative and the local police are aware that students attending the school have a disability and receive special education services. The Special Education Director stated during an interview on November 15, 2023 that prior to the start of the school year staff at the school meet with the police department to discuss the expectations of the police if called by staff at the school.

The principal reported in an incident report dated October 24, 2023

I was called morning because he was hitting staff. Found him in front of [case manager's] door with three adults around him. He was stripping paint off the door. I told the adults to take a break and I would handle it. I let him pick at the paint because he was letting people in and out of the door. When he settled I had [special education teacher] monitor him

I was called in lunch room as he was knocking over tables and chairs and throwing things. [Staff] was able to get him to go with her to the timeout room. I went back to my office and was called because he had eloped the building. I asked for police assistance when he was not being safe and we were going to be able to bring him back. I asked [case manager] to call his mom to let her know what had happened. When I found them [student] had kicked the van and I believe he had assaulted [special education teacher]. I asked if I could help him and he started hitting me with his lunch bag. He went to the van and I went to talk to him and he started hitting me. The police came and he escalated. The police said they were going to take him in as a child in need of care. I told them mom was on her way. Mom arrived and was upset. The police told her she had to stay away from [student] at that time. [Student's] grandma came and she was upset. She stated they were going to file another complaint. The police decided [student's] mom would have to meet them at the station to work things out. I returned to the building.

The Police Officer stated that he was dispatched when the school reported to the police that the student was 2-3 blocks away from the school. The Police Officer reported he was aware the student had a disability because the community is small, and he personally knows family members including the mother. He further stated that while the police department met with

the school staff prior to the start of the school year about their role he did not attend the meeting but was made aware of the information. He stated that he and fellow police officers have received Critical Incident Training that provides strategies and information on interacting with students with disabilities for approximately the past eight years. He stated that any time he has been dispatched he has not received any personally identifiable information about the student, only guidance for strategies that may assist with de-escalation.

Conclusion

Based on the foregoing, *it is not substantiated* that USD #382 failed to inform police officers that the student was eligible for special education services when called for behavior at the school during the 2023-2024 school year. Due to the purpose of the school the student attended it could be reasonably assumed by the police that the student had a disability, but not any personally identifiable information. IDEA regulations address protecting personally identifying information and FERPA further address situations in which that information may be accessed. In this case the parent's desire that police understand strategies about disabilities is beyond the reach of IDEA regulations.

Issue Two

USD #382, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to follow the student's IEP, specifically the accommodation of chunking of assignments or assessments and shortening assignments and assessments up to 50% without changing the content to ensure minimal frustration on November 2, 2023 which resulted in the student's behavior to escalate and result in staff and student injury.

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 findings of Issue One are incorporated herein by reference. The IEP in effect during the 2023-2024 school year dated December 10, 2022 lists "chunking of assignments or assessments" and "assignments and assessments may be shortened up to 50% without changing the content to ensure minimal frustration" as two accommodations whenever assignments or assessments are given at the Special Education Day School for the length of the assignment or assessment with a start date of 12/10/2022 and end date of 12/08/2023.

The mother reported during an interview on November 28, 2023 that she talked with the teacher and student about what led to the student's behavior on November 2. She was told that the student had been given a two question assignment. She reported that the student had completed one of the questions but refused the other question and that was consistent with the accommodation of 50% of the assignment.

During an interview with the case manager and the other special education teacher on December 5, 2023 the case manager stated that the chunking accommodation is regularly implemented and was described as breaking instructional time into smaller "chunks" dependent on the student's body language during stressful situations.

The case manager further described the accommodation for reducing the November 2, 2023 classroom assignment by 50%. She stated that the student had two journal prompts. During the first journal prompt the goal was for any student to write one grammatically correct sentence. She stated that the student's accommodation for that part of the classroom assignment was for him to write one sentence and it would not need to be grammatically correct. Documentation showed the student's work on the November 2, 2023 assignment was, "Thursday, november 2, 2023 i am thankful for go hom"

The second journal assignment was for all students to write four sentences. She stated the accommodation was for the student to write two sentences and the student wrote one sentence and when told he needed to write one more sentence his behavior quickly escalated. The case manager and special education teacher stated that the student uses a first work/then recess schedule and his behavior was likely triggered by delaying his recess until he finished writing the second sentence.

An incident report dated November 2, 2023 written by the Principal recorded:

[Principal] entered the room to find [student] knocking desks and chairs over as well as throwing things across the room. [Principal] became concerned about [student] damaging two laptops that were on a desk [Principal] placed the laptops on a shelf out of harms way. [Student] became mad at [Principal] for doing this and began to escalate the throwing of objects. [Principal] instructed [special education teacher] to allow [student] to continue what he was doing with the intent of avoiding a physical confrontation. [Principal] shared with [special education teacher] that it would be best to take pictures of the damage for later. [Student] overheard this, and started attacking [Principal]. [Special education teacher] and [Principal] then escorted [student] to the seclusion room across the hallway. While trying to leave the seclusion room, [Student] started kicking and trying to bite [Principal]. As [Principal] was trying to get away, [student] then grabbed [Principal] by the coat collar pulling him towards the ground. In doing so, Mr. Marciano felt a pop in his back as well as a loss of feeling going down his legs. [Principal] asked for additional assistance. During this process [student] wrapped his arms and legs around [Principal] leg and started biting him in the leg.

As a result of the incident [Principal] experienced trauma to the back as well as bite marks to his arm and leg.

Written witness statements from staff members are similar to the incident report.

Conclusion

Based on the review of the IEP accommodations and case manager description of the accommodation implementation *it is not substantiated* that USD #382 failed to follow the student's IEP, specifically the accommodation of chunking of assignments or assessments and shortening assignments and assessments up to 50% without changing the content to ensure minimal frustration on November 2, 2023 which resulted in the student's behavior to escalate and result in staff and student injury.

Issue Three

USD #382, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide documentation of student discipline (seclusion, calling police, OSS) during the 2023-2024 school year.

Applicable Law

IDEA does not specifically address providing documentation of student discipline notice to parents; that is guided by district practice. However, if a district is considering a suspension or an expulsion of a child with a disability, school districts must follow the requirements of K.S.A. 72-6115. For long-term suspensions or expulsions, the school district must also provide parents the required notice, under K.S.A. 72-3433(d), of the school's decision to make a disciplinary change of placement as well as a copy of the Parent Rights document 34 C.F.R. 300.523(a)(1).

Analysis: Findings of Fact

The findings of Issues One and Two are incorporated herein by reference.

The parent alleged that there have been multiple times the student has been in seclusion and sent home and the police have been called one time. She stated that she had received documentation for 10/5/23, 10/6/23, 10/10/23, 10/11/23, and 10/26/23.

She stated the student was suspended on November 2, 2023 and a manifestation determination was held subsequent to filing this complaint. These actions are not investigated as part of this complaint.

Behavior incident reports were reported for October 5, 2023, October 6, 2023 (2 reports), October 10, 2023, and October 24, 2023. The district reported that this is not a special education requirement, and it is the district's practice to send this report to all parents on record by the district.

The Behavior incident dated October 11, 2023 recorded, "Administrative Action: [student] has been suspended from school for the remainder of today (10-11-23) and all day tomorrow (10-12-23). These account for his first two days of suspensions this school year.

Emergency Safety Intervention reports were made for October 5, 2023, October 10, 2023, October 18, 2023, and October 30, 2023. The district reported that this is not a special education requirement, and it is the district's practice to send this report to all parents on record by the district.

Documentation showed police were called on October 24, 2023 and the school secretary called the parent as is the district's practice.

Documentation showed an instance on October 26, 2023 in a teacher note that "I went into timeout room because he was tearing up camera wires." There was not a corresponding ESI report for this incident. The Special Education Director explained in an email on December 7, 2023 to the Complaint Investigator that, "he was not secluded in this instance or restrained. [Student] went into the timeout room on his own to take a break with the doors open and began to tear up the camera wires and the principal utilized black mats around the principal's body when he stood in the room with the doors open to avoid being hurt."

The parent reported during an interview on November 28, 2023 she learned that when she picked up her student when called about a behavioral incident it was considered an excused absence and not considered a behavioral episode.

Conclusion

Based on the foregoing, *it is not substantiated* through IDEA that USD #382 failed to provide documentation of student discipline (seclusion, calling police, OSS) during the 2023-2024 school year.

Summary of Conclusions/Corrective Action

1. **ISSUE ONE:** A violation of 34 C.F.R. §300.622(a) and 34 C.F.R. 99.31(a)(10) was not found, based on review of law and interviews. 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 review of student IEP and interview with school staff. Corrective action is not required.
3. **ISSUE THREE:** A violation of 34 C.F.R. 300.523(a)(1) was not found, based on review of IDEA regulation and documentation. 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)