

KANSAS STATE DEPARTMENT OF EDUCATION
SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT
FILED AGAINST
UNIFIED SCHOOL DISTRICT #379
ON AUGUST 29, 2023

DATE OF REPORT SEPTEMBER 21, 2023

This report is in response to a complaint filed with our office by ----- on behalf of her son, -----.
For the remainder of this report, -----will be referred to as “the student.” ----- will be referred
to as “the parent.”

Investigation of Complaint

On August 31, 2023, the complaint investigator spoke via telephone with Tom DeBauche, Assistant Director of Special Education for the Twin Lakes Educational Cooperative. On September 1, 2023, the investigator spoke by telephone with the Director of Special Education for the Cooperative, Anita Breen. The investigator spoke by telephone with the parent on September 5, 2023.

In completing this investigation, the complaint investigator reviewed the following materials:

- IEP for the student dated September 21, 2021
- Individualized Education Program (IEP) Amendment dated August 18, 2022
- Prior Written Notice for Special Education and Related Services, Educational Placement, Changes in Services, Change in Placement, and Request for Consent dated August 18, 2022
- IEP for the student dated September 7, 2022
- Prior Written Notice for Special Education and Related Services, Educational Placement, Changes in Services, Change in Placement, and Request for Consent dated September 7, 2022
- Email exchanges between the parent and special education teachers dated April 5, 2023
- Email dated April 10, 2023 from the parent to the building principal
- IEP for the student dated April 10, 2023
- Email exchanges between the parent and special education teacher and building principal during the period of April 12, 2023 through
- IEP Addendum dated May 10, 2023
- Prior Written Notice for Identification, Special Education and Related Services, Educational Placement, Change in Services, Change in Placement, and Request for Consent dated May 10, 2023

- Email dated August 17, 2023 from the student's case manager to the parent
- Email dated August 18, 2023 from the parent to the student's case manager
- Email dated August 18, 2023 from the assistant principal to the parent
- Email dated August 18, 2023 from the parent to the assistant principal
- Handbook for the student's high school
- Log entries covering the period of March 9 through August 17, 2023
- IEP Progress Report for the student covering the period of December 19, 2022 through April 6, 2023
- Additional material provided by the parent in support of Issue Two

Background Information

This investigation involves a 16-year old boy who is enrolled in the 11th grade in his district high school. He transferred into the current district at the beginning of the 2022-23 school year. The student has a diagnosis of Autism.

Issues

In her complaint, the parent raised three issues:

Issue One

The student was given detention because he asked the special education teacher if she was gay on the first day of school. The school did not respond to the parent's request for a meeting to discuss this disciplinary action.

Parent's Position

The parent alleges that the district acted inappropriately when assigning the student a detention simply because he asked a question regarding his special education teacher's sexual orientation during a first-day-of-school activity.

District's Position

The district asserts that special education statutes and regulations do not apply to this situation because the assignment of a detention as a disciplinary consequence is not a special education action. The district also asserts that special education statutes and regulations do not apply to meetings that are unrelated to the provision of special education services to the student.

Applicable Statutes and Regulations

The IDEA allows schools to implement customary disciplinary techniques such as detention or the restriction of privileges for students with disabilities so long as those forms of discipline are

also used with nondisabled children and do not violate the provisions of a child's Individualized Education Program (IEP) or the child's right to a free appropriate public education (FAPE).

Special education statutes and regulations specifically address those disciplinary actions – such as suspension or expulsion – which result in a student's removal from the educational environment and change in the student's placement.

The parents of a child with an exceptionality have the right to request an IEP meeting at any time.

Investigative Findings

Section IV B of the student handbook for the student's high school states:

"The following information will give general guidelines for assigning consequences as a result of various behavior infractions. Administrators will use their discretion in assigning consequences other than those listed."

According to the handbook, detentions may be assigned for any of the following infractions:

- Cafeteria violation
- Clothing violation
- Display of affection
- Parking violation
- Skipping teacher assigned/school assigned detention
- Profanity
- Hall/grounds violation
- Office referral
- Electronic violation
- Class disturbance
- Being in the parking lot without permission
- Leaving class without permission
- Insubordination/refusing a reasonable request
- Inappropriate displays of temper
- Throwing snowballs
- Forging/altering passes
- Lying

The handbook does not include any appeal process regarding the assignment of detentions. However, according to the director of special education, the superintendent of schools outlined the following process for the voicing of a complaint regarding such actions:

"[The student] was given the detention by the assistant principal, so the first person [the parent] should talk to is the principal, and then the superintendent, if she feels [the parent] still did not get her answers, and finally the school board."

The student's April 2023 IEP does not address the implementation of disciplinary consequences for the student nor does it include a behavior plan.

On August 17, 2023, the first day of the 2023-24 school year, while engaged in a "get to know you activity" in a study skills class led by the student's special education case manager, the student asked the teacher if she was gay. According to the parent, the student had seen a picture of the teacher and another teacher with a baby that reminded the student of pictures of his family when he was young. The teacher told the student that she was "married to my husband."

The special education teacher sent an email to the parent at 3:54 PM on August 17, 2023 describing the incident. The teacher did not make an office referral regarding the exchange with the student but did make a log entry in the Powerschool program which provides information to the principal and assistant principal regarding what happens in the classroom. After viewing the entry, the principal and assistant principal discussed the exchange and the timing of the student's question and determined that the student's question warranted a detention.

At 2:35 PM on August 18, 2023, the parent sent an email stating:

"I am going to need more information on what exactly happened that warranted a detention. Because this email doesn't show me anything that warranted a detention. I need more context please."

According to an August 18, 2023 email sent from the assistant principal to the parent at 4:00 PM, he had assigned the 20-minute after school detention because he "did not feel it was appropriate nor relevant to ask [the teacher] in front of the class if she was gay." The student had by that time already served the detention after school on August 17, 2023.

In his August 18, 2023 email to the parent, the assistant principal stated:

"If you have any further questions I would be happy to meet with you on Monday."

The parent responded to the principal by email at 5:43 PM on August 18, 2023, writing:

"So yes, we all can meet on Monday afternoon after school. If that time doesn't work for everyone then let me know what will work... you can not give my child detention for asking a question without any ill intent. OR tell him that verifying sexual orientation is wrong. Plus not inform the parent until after the detention is over..."

According to the assistant principal, he was prepared to meet with the parent after school on August 21, 2023 to discuss the detention but the parent did not come to the school that afternoon as planned and did not call to let anyone at the school know she would not be

coming. According to the assistant principal, he did not contact the parent to reschedule the meeting.

Summary and Conclusions

Unless the imposition of a disciplinary consequence violates the provisions of a child's IEP, impacts the child's right to a FAPE, or results in the student's removal from the educational environment, schools are allowed to implement customary disciplinary techniques such as detention or the restriction of privileges for students with disabilities so long as those forms of discipline are also used with nondisabled children.

The student handbook for the student's high school states that "detention" is used as a disciplinary consequence at the school and administrators will "use their discretion in assigning consequences..."

In this instance, the principal and assistant principal determined that the assignment of a detention was warranted for the student's question. The detention was not prohibited by the student's IEP. The 20-minute detention was served after school and did not remove the student from the educational environment or impact the student's access to a FAPE. District staff confirmed that detentions are assigned to both disabled and nondisabled students at the school. A violation of special education statutes and regulations *is not substantiated* on this aspect of this issue.

With regard to the district's alleged failure to conduct a meeting requested by the parent, no evidence was provided by either party that shows that the meeting requested by the parent and scheduled for August 21, 2023 was to be an IEP team meeting. Rather, the purpose of the meeting was to discuss the imposition of the disciplinary consequence of a detention for the student. As stated by the parent in her email to the special education teacher, she was seeking additional "context" to demonstrate why a detention was warranted. The assistant principal offered to meet with the parent to answer her questions, and a date and time for the meeting was established by the parties.

Because no evidence was provided to show that the parent requested an IEP team meeting, a violation of special education statutes and regulations *is not established* on this aspect of this issue.

Issue Two

The district grading scales are inaccurate and teachers are biased.

Parent's Position

The parent contends that the scale used by the special education teacher to give a course letter grade to the student for his Study Skills classroom was arbitrary and that the student was given daily grades based on inaccurate information.

District's Position

The district asserts that neither the assignment of course grades nor alleged teacher bias are covered under special education laws and are not properly addressed through the formal complaint process.

Applicable Statutes and Regulations

A formal complaint must allege a violation of state or federal special education laws or regulations (K.A.R. 91-40-51(a)(1)). Neither the Individuals with Disabilities Education Act (IDEA) nor Kansas special education statutes or regulations contain specific provisions regarding grading on student report cards. The establishment of grading policies and practices for a given school district fall under the authority of the local school district and local Board of Education. While an IEP team may include specific accommodations or modifications regarding grading in a student's IEP in order to provide the student a free appropriate public education (FAPE), complaints regarding general grading practices unrelated to such accommodations or modifications should be directed through a normal chain-of-command process at the building and district level. An issue regarding a course grade is not considered to be a violation of special education statutes and regulations unless the student's IEP contains modifications or accommodations related to those grading practices which have not been implemented.

In the case of this student, none of the IEPs for the student which have been in place during the 12-month period covered by this complaint have included accommodations or modifications related to course grades. Therefore, the investigator did not address this aspect of this issue as a part of this investigation.

Neither state nor federal special education statutes address the issue of bias. However, while the Office for Civil Rights (OCR) has no enforcement authority under IDEA, OCR does have enforcement responsibilities under two of the applicable federal laws: Title II of the Americans with Disabilities Act of 1990 (Title II) and Section 504 of the Rehabilitation Act of 1973 (Section 504). Title II prohibits discrimination on the basis of disability by public entities, including public elementary and secondary school systems, regardless of federal financial assistance. Section 504 prohibits discrimination on the basis of disability in programs or activities receiving federal financial assistance. This means that with respect to grades, class ranking, honor roll, graduation, and diplomas, students with disabilities must be treated the same as all other students.

A complaint investigator has no authority to investigate complaints regarding discrimination. Complaints regarding discriminatory grading practices or bias in Kansas may be directed to the Kansas City Office for Civil Rights - U.S. Department of Education at the following address:

One Petticoat Lane
1010 Walnut Street, 3rd floor, Suite 320 Kansas City, MO 64106

Telephone: 816-268-0550

FAX: 816-268-0599; TDD: 800-877-8339 Email: OCR.KansasCity@ed.gov

Issue Three

The student was lectured by the principal and told several times, "Do not tell your mom."

Special education statutes and regulations do not address this type of interaction between a district administrator and a student. Therefore, this issue was not investigated. The parent may, of course, challenge the elements of this exchange through a district's normal chain-of-command complaint process discussed above under Issues One and Two.

Corrective Action

Information gathered in the course of this investigation *has not substantiated* noncompliance with special education statutes and regulations on an issue presented in this complaint. Therefore, no corrective actions are warranted.

Investigator



Diana Durkin

Complaint Investigator

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)