

KANSAS STATE DEPARTMENT OF EDUCATION  
SPECIAL EDUCATION AND TITLE SERVICES  
REPORT OF COMPLAINT  
FILED AGAINST  
UNIFIED SCHOOL DISTRICT #229  
ON JANUARY 11, 2024 AND JANUARY 17, 2024  
DATE OF REPORT FEBRUARY 9, 2024

This report is in response to a complaint filed with our office on behalf of ----- by his father, -----. In the remainder of the report, ----- will be referred to as "the student." ----- will be referred to as "the father," "the parent," or "the complainant." ----- will be referred to as "the mother." Together, ----- and ----- will be referred to as "the parents."

The complaint is against USD #229, Blue Valley Public Schools. In the remainder of the report, the "school," the "district," and the "local education agency" (LEA) shall refer to USD #229.

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 January 11, 2024 and an additional complaint on January 17, 2024, both of which were combined in this investigation. The 30-day timeline ends with the publication of this report on February 9, 2024.

### **Evidence Reviewed**

During the investigation, the complaint investigator, Gwen Beegle, reviewed all evidence and documentation, which was provided by both the district and the complainant(s). Emails were exchanged between the complainant, KSDE and the investigator between January 17, 2024 and January 18, 2024. An interview with the complainant was conducted by email submission of questions on January 29, 2024 with his written reply to each question by email on January 31, 2024. The complaint investigator received emails from the district from January 17, 2024 to February 2, 2024. The following persons were interviewed on February 2, 2024: Margaret Barilleaux (IVE Special Educator), Karen Veneble (Indian Valley Elementary (IVE) Principal) and Mark Schmidt (Assistant Superintendent Special Education). The following documentation and information were used in consideration of the issue(s):

1. The student's IEP dated April 20, 2023
2. [The student] IEP goals, scanned google doc dated October 12, 2023 at 8:54 a.m.
3. IEP Progress Report for the student dated October 13, 2023
4. Acadience Online Parent Report for the student dated December 14, 2023
5. T-Bird Times (weekly newsletters) dated December 15, 2023 and January 5, 2024

6. IEP Progress Report for the student dated December 20, 2023
7. Email from Margaret Barilleaux (IVE Special Educator) to the father, the mother, Karen Veneble (IVE Principal), Mark Schmidt (Assistant Superintendent Special Education), and Crista Grimwood (KSDE Education Consultant) dated January 17, 2024 at 10:23 a.m.
8. Email from the father to Margaret Barilleaux, Karen Veneble, Mark Schmidt, and Crista Grimwood dated January 17, 2024 at 10:27 p.m.
9. Email from Margaret Barilleaux to the father, the mother, Karen Veneble, Mark Schmidt, and Crista Grimwood dated January 17, 2024 at 1:56 p.m.
10. Email from the parent to Margaret Barilleaux dated January 17, 2024 at 2:04 p.m.
11. Email from Mark Schmidt to the parent dated January 17, 2024 at 2:21 p.m.
12. Email from the parent to Mark Schmidt, Crista Grimwood, Gwen Beegle, Margaret Barilleaux, Samantha Lovgren-Urbe (Speech Language Pathologist), Carol Lujano (School Psychologist) and Bailee Greenhaw (School Social Worker) dated January 18, 2024 at 3:06 p.m.
13. The district's response to the complaint dated January 24, 2024
14. The student's schedule showing services provided, 2023-2024 school year
15. The elementary structured literacy lesson plan template
16. The students 2023-24 grade card with first and second quarter grades

## **Background Information**

This investigation involves a nine year-old male student currently enrolled in the third grade at Indian Valley Elementary School in USD #229. The student was initially found eligible for special education and related services at the age of three under the exceptionality category of Developmental Delay on October 6, 2017 while attending preschool at Oak Hill Elementary School in USD #229. His initial IEP provided specialized instruction, occupational therapy (OT), speech therapy, and language therapy. He transitioned to grade school at Indian Valley Elementary School in August 2020 and USD #229 has continued to provide specialized instruction and related services as required by his IEPs through the current date. His most recent re-evaluation was conducted on April 20, 2023 and it was determined that the student continues to meet the eligibility criteria for the exceptionality category of Speech/Language Disorder.

## **Issues Investigated**

**ISSUE ONE:** The USD #229 in violation of state and federal regulations implementing the Individual with Disabilities Act (IDEA), failed to provide the parent progress reports, specifically the report due on January 10, 2024

**ISSUE TWO:** The USD 229, in violation of state and federal regulations implementing the Individual with Disabilities Act (IDEA), failed to address the student's lack of

progress on two IEP goals specifically by creating and using a "mitigation plan and report."

**ISSUE THREE:** The USD 229, in violation of state and federal regulations implementing the Individual with Disabilities Act (IDEA), failed to provide FAPE by implementing the IEP, specifically "did fail on addressing two [IEP] goals on 2 consecutive quarters of the 2023-24 school year"

### **Issue One**

The USD #229 in violation of state and federal regulations implementing the Individual with Disabilities Act (IDEA), failed to provide the parent progress reports on January 10, 2024.

### **Applicable Law**

Federal statutes and regulations at 34 CFR 300.320(a)(3) require that the IEP include a description of how the student's progress toward meeting the IEP's annual goals will be measured and when periodic reports on the student's progress will be made, such as through the use of quarterly or other periodic reports concurrent with the issuance of grade cards.

### **Analysis: Findings of Fact**

The parent alleged that the district did not provide a progress report for the student on January 10, 2024. The parent alleged this is a violation of IDEA because the principal promised the parent that the progress report was due on that date.

The district responded: "The District Disagrees with the parents' accusation that it failed to provide a quarterly progress report. "As noted on page 7 of the student's IEP "*Progress on goals will be reported with the same frequency as the general education report cards.*" As noted below, both the general education grade card and special education progress report were released at the same time and in the same way. [the parent] and all other parents received access to both general education report cards, and for parents with students on IEPs, special education progress reports, on January 12, 2024 via ParentVue, the student management information system utilized in the District. This is the system used for reviewing schedules, grade reports, progress monitoring, accessing IEP's, paying fees and lunch, enrollment, etc. Originally the general education and special education reports were scheduled to be released on January 10, 2024, but because of a technology glitch, the release of both were delayed until January 12, 2024. Parents were notified by T-Bird Times (weekly newsletter) prior to winter break.

The district response continued: "The Special Education Teacher sent an email 1st quarter to families with directions on accessing progress reports. She sent a second email on January 17, 2024 also for accessing 2nd quarter dates along with the 2nd quarter progress report

requested by [the parent]. January 17 was the first day back to work after the snow days and the MLK holiday.”

The district responded: “While [the parent] claims he never uses ParentVue, he logged on most recently on 1/09/2024. . . We understand that [the parent] would prefer not to use the system that the district purchased to streamline communication, but it is clear that he does have access. While the district tries to honor [the parent]’s special request to send home a PDF of his progress reports, this attempt to improve parent/school relationships, does not create an additional burden on the school district for IDEA compliance.”

Findings based on the documentation listed above include the following:

The district reported and documentation showed that the parent was alerted along with school students and families that the report cards would be available in Parent Vue on Friday, January 12, 2024 in school newsletters that provided directions for accessing the grades in ParentVue. The district reported that the parent infrequently used ParentVue and documentation showed a log on to the system.

The district reported and documentation showed that on Wednesday, January 17, 2024, the teacher provided an email directly to the parent stating that the progress reports were available in ParentVue. This email followed three missed days of school (one holiday and two snow days). Additionally, documentation showed that the teacher emailed the progress reports in pdf format to the parent on January 17, 2023 and notified the parents that she would send a paper copy home with the student when he returned to school following his absence. In addition, an email reply by the parent showed that the parent received the teacher’s email regarding the progress report’s delivery to him.

### **Conclusion**

In this case, the district’s technology precluded the anticipated January 10, 2024 release of grades and progress reports. The student’s IEP requires that progress on goals will be reported on the same frequency as general education report cards, which occurred through ParentVue on January 12, 2024. The district is not obligated to provide the progress reports in the parent’s preferred format, and yet it did so for the parent at his request within a few days of its electronic availability. The slight delay in releasing grades and progress reports is not a violation of IDEA. The district is commended for its assistance in providing the progress reports to the parent in a preferred format.

Based on the foregoing, *it is not substantiated* that USD #229 in violation of state and federal regulations implementing the Individual with Disabilities Act (IDEA), failed to provide the parent progress reports on January 10, 2024.

## **Issue Two**

The USD 229, in violation of state and federal regulations implementing the Individual with Disabilities Act (IDEA), failed to address the student's lack of progress on two IEP goals specifically by creating and using a "mitigation plan and report."

### **Applicable Law**

Federal/State statutes and regulations at CFR 300.324(b) state that the district must ensure that the IEP team meets to review the IEP periodically (at least annually) to determine whether the annual goals are being achieved, to revise the IEP as appropriate to address an lack of expected progress toward annual goals and in the general education curriculum if appropriate, special education evaluations, information provided by the parent for evaluations, the child's anticipated needs, or other matters.

### **Analysis: Findings of Fact**

The parent alleged that the student's general education data showed that the student had not made progress in two IEP goals. From the written complaint:

*Concern:* "Blue Valley District failed to provide [IEP] goals on 1/10/24 as described for the [the student's] school"

*Facts:* "At the end of school year 07 2022-2023, there are two goals IEP went down to 40% in the report to Fall 2023 compare with First Quarter of 2023-2024 and Second Quarter of 2023-2024 and MAZE score has been [decreasing]"

*Steps to resolve:* "BV has not taken actions plan to mitigate these 2 [IEP] goals"

The district responded: "The District disagrees that the student is not making progress on the IEP Goals. In addition, even if the student was not making progress, the IDEA does not recognize a "mitigation plan and report" as a remedy. The IEP (4/20/2024) and the 2nd quarter progress report clearly demonstrate that the student has made progress on the IEP goals."

The following findings are based upon a review of documentation and interviews listed above.

The findings of Issue One are incorporated herein by reference.

The student's most recent evaluation and IEP meeting was held on April 20, 2023. The student's IEP of that date included the following goals:

1. In written language, when writing, [the student] will use encoding skills by saying the word, tap the word phoneme by phoneme to accurately spell the word on 4/5 opportunities with 80% accuracy.
2. In reading, following a reading passage at his instructional level, [the student] will write a five part retell providing (who/what/when/where/why) providing accurate information with 80% accuracy for 4/5 data points.

3. In reading, when given a list of words with closed syllable consonant combinations, silent E and open syllable, soft c, g, s, tch, dge, vowel team syllables, and vowel R syllables [the student] will read the words on 4/5 opportunities with 95% accuracy.
4. In language, during speech-language therapy tasks, [the student] will follow 3-step commands with at least 1 modifier (spatial or temporal) in 80% of opportunities without repetition in 2 out of 3 data collection days.
5. In language, [the student] will listen to a 3rd grade level short story and will answer "what happened" and "when" questions with 80% accuracy when given a visual cue for 2 out of 3 data days.
6. In language, with a visual cue, [the student] will listen to a 3rd grade level short story and will retell the story in sequential order with grammatically correct sentences using nine story grammar elements (character, setting, problem, feeling, plan, attempt to solve, consequence, ending, and ending feeling) with 80% accuracy for 2 out of 3 data days.

The IEP stated that, for district testing such as the Math Map and Reading Map, the student can take the test in a quiet, non-competitive setting. The student's IEP did not include further supplementary aids and services or accommodations in the classroom.

The parent reported and the Acadience OnLine Learning Parent Report showed that the student had a MAZE score of 4 (well below benchmark) at the beginning of the year and a MAZE score of 2 (well below benchmark) at the midpoint of the year. The MAZE "assesses the student's ability to construct meaning from text" according to the report.

The district reported that the MAZE assessment tests late developing reading skills in an unfamiliar way (leaving words blank in a reading passage for students to complete). The district reported that this is an area of weakness for the student and only one aspect of the student's reading performance as measured by the five indicators on the district test (Acadience).

On the same district testing (Acadience) report, the student's reading composite score was 246 (at benchmark) at the beginning of the year and 258 (below benchmark) at the midpoint of the year; the student's oral reading fluency -words correct score was 74 (at benchmark) at the beginning of the year and 76 (below benchmark) at the midpoint of the year. The report showed that the student's oral reading fluency-accuracy was above benchmark for both reporting periods, and his retelling score was at benchmark for both reporting periods. In summary, the student's second quarter Acadience test status was that one indicator was above benchmark, one indicator was at benchmark, two indicators were below benchmark and one indicator was well below benchmark.

The district reported and the student's progress reports showed that the student made progress toward each of his six IEP goals for each of the regular school year progress reporting periods since the April 20, 2023 IEP was developed, on May 23, 2023; October 13, 2023; and

December 20, 2023. In addition, the student attended Extended School Year. His progress on Goal 1 (writing) and Goal 3 (reading words) was judged as making progress toward his goals on June 29, 2023.

The parent reported that progress reports showed a decrease for two goals. When interviewed, the district reported the following explanations:

On Goal 1 (written language) at the spring of last year, scores on isolated syllable types were provided, showing the student's success at encoding the syllables when presented one type at a time ranging from 73% to 100% accuracy. During ESY, the goal was taught but not scored in the same way. During the first quarter of the year, the district presented the syllable types in a mixed format, and the student scored 40% accuracy on the more difficult presentation task. During the second quarter of this year, the student's score on mixed syllables was 81% accuracy; the district rechecked the student's score for the purposes of the complaint on February 2, 2024 and reported 86% on mixed presentation. The district reported and documentation showed that the student is performing above his goal at this time.

Similarly, for Goal 3 (reading), the skill was tested by presenting the syllable types in isolation then providing an average on May 26, 2023 and June 26, 2023, when the student scored from 86% to 100% accuracy for an average of 93% across subskills. During the first quarter of the current school year, the student scored 80% on a mixed presentation list, showing generalization of the skill on a harder task. During the second quarter the student scored 88% accuracy on this task. The district rechecked the students' score for the purposes of the complaint on February 2, 2024 and reported 95% on mixed presentation. The district reported and documentation showed that the student is performing above his goal at this time.

When asked, the district reported that they had no concerns about the student's progress, describing it as "closing the gap." The district reported that the student has increased his work ethic with the new teacher since the beginning of the year, knows the rules of phonics, and needs more practice in applying his reading skills.

The district provided a copy of the student's 2023-24 grade report on first and second quarter grades, which showed that the student is performing at standard (3.0) in science and social studies, and at standard in two of three math standards. In reading, the student was graded at standard (3.0) in writing, speaking and listening, and between progressing toward and at standard for reading foundations (2.0), reading - informational (2.80) and reading-literature (2.83).

## **Conclusion**

In this case, it is found that the student made progress on each IEP goal for each quarter of the school year since the IEP was put into place in April, 2023. The IEP team met for the annual IEP on April 20, 2023 and progress reports have documented the student's progress toward mastery of each of the IEP goals since that time. The parent expressed concerns on two fronts,

that the student's IEP progress reports seemed to show decreasing scores and the student's scores on a general education assessment did not show equal progress on each benchmark across reporting periods. As noted above, the progress monitoring reports showed progress throughout the school year. While it is understandable that the parent wishes the student to make equal progress across all achievement indicators, it is found that the student is making progress in both general and special education curricula according to the student's progress reports, grades, and district testing. The district is correct that a mitigation plan and report are not remedies required by IDEA in any case.

Based on the foregoing, *it is not substantiated* that USD 229, in violation of state and federal regulations implementing the Individual with Disabilities Act (IDEA), failed to address the student's lack of progress on two IEP goals specifically by creating and using a "mitigation plan and report."

### **Issue Three**

The USD 229, in violation of state and federal regulations implementing the Individual with Disabilities Act (IDEA), failed to provide FAPE by implementing the IEP, specifically "did fail on addressing two [IEP] goals on 2 consecutive quarters of the 2023-24 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.

### **Analysis: Findings of Fact**

The complainant alleged that the district did not address two IEP goals for two quarters of the year. The complainant alleged that two IEP goals were of concern, Goal 1 on writing and Goal 3 on reading. The complainant alleged that the lack of progress on these two goals indicated that the district "did fail on addressing" these two goals. The complainant alleged that "FAPE was at issue" in the second written complaint.

The district responded that it disagreed that it failed to provide FAPE or to fail on addressing two IEP goals on two quarters of the 2023-24 school year, pointing to the student's IEP dated April 20, 2023 and second quarter progress report to show that the student made progress on all his IEP goals.

The following findings are based upon a review of documentation listed above.

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

The student's April 20, 2023 listed the following IEP services, in addition to transportation: 20 minutes, two times each week of direct language therapy in a special education setting



individually or with a small group; 60 minutes five times a week of Special Education services in a general education classroom to help support his goals; and 30 minutes five times a week of Special Education services in the special education classroom. This service "may include but is not limited to the following: small group or one on one work on reading/spelling/writing skills."

The district provided a copy of the student's 2023-2024 schedule showing direct language therapy twice a week for 20 minutes; student's special education pull out for 60 minutes five times a week, and special education support in the general classroom 30 minutes five times a week.

The student's special education teacher provided a description of her structured literacy lesson from the student's special education class and a template of the structured literacy lesson plan. According to the teacher, the structured literacy lesson included components that address the student's goals. Documentation showed the lesson plan includes writing, letter sounds, blending sounds, phonemic awareness, syllabification, reviewing reading words and teaching new words, reading phrases, spelling, multisensory new concept or focused reteaching, oral reading, sentence dictation, and a reflection on the lesson. The teacher reported that she recorded notes on the student's errors throughout the lesson and reviewed them with the student at the end of the lesson. Error words were practiced on the next day's lesson.

The principal reported informal observations the teacher and the classroom informally and conducted a formal observation of the teacher in October, 2023.

## **Conclusion**

In this case, it is found that the student is receiving instruction according to his IEP services and that those services directly address his IEP goals. Further, as noted in Issue Two, the student is making progress in the general curriculum and on his special education goals.

Based on the foregoing, *it is not substantiated* that USD 229, in violation of state and federal regulations implementing the Individual with Disabilities Act (IDEA), failed to provide FAPE by implementing the IEP, specifically "did fail on addressing two [IEP] goals on 2 consecutive quarters of the 2023-24 school year."

## **Summary of Conclusions/Corrective Actions**

1. **ISSUE ONE:** A violation of 34 CFR 300.320(a)(3) was not found, based on facts listed above. Corrective action is not required.
2. **ISSUE TWO:** A violation of CFR 300.324(b) was not found, based on facts listed above. Corrective action is not required.
3. **ISSUE THREE:** A violation of 34 C.F.R. 300.323(c)(2) was not found, based on facts listed above. 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](mailto: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)