

KANSAS STATE DEPARTMENT OF EDUCATION
SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT
FILED AGAINST
UNIFIED SCHOOL DISTRICT #260
ON OCTOBER 4, 2023

DATE OF REPORT OCTOBER 13, 2023

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

The complaint is against USD #260. In the remainder of the report, USD #260 will be referred to as "the district", "the local education agency (LEA)", or "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 October 4, 2023 and the investigation ends with the distribution of this report.

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). The complaint investigator spoke with the complainant to clarify the concerns and issue for the complaint on October 5, 2023. The following persons were interviewed: Dr. Dawn Gresham (Special Education Director - USD #260) on October 10, 2023; June Henkelman (Assistant Special Education Director - USD #260) on October 10, 2023; and Emma Alderson (former Sports Para) on October 9, 2023. The complaint investigator received emails from the district from October 5, 2023 to October 6, 2023.

The following documentation and information were used in consideration of the issue(s):

1. Student's IEP dated October 12, 2022
2. PWN for Identification, Special Education and Related Services, Educational Placement dated October 12, 2022 for a meeting on October 12, 2022.
3. Notice of meeting dated January 9, 2023 for a meeting on January 9, 2023 signed by the parent waiving 10-day notice on January 9, 2023
4. IEP amendment dated January 9, 2023, signed by the parent giving consent on January 9, 2023

5. Prior Written Notice for a material change to the IEP dated January 9, 2023 for a meeting on January 9, 2023 signed by the parent giving consent on January 9, 2023
6. IEP amendment dated March 7, 2023
7. Prior Written Notice for a material change in services and other changes to the IEP dated March 7, 2023 for a meeting on March 7, 2023 signed by the parent on March 7, 2023
8. IEP meeting notes dated April 27, 2023
9. IEP at a Glance for the student for October 12, 2022 IEP updated April 27, 2023
10. IEP amendment dated August 24, 2023
11. Prior Written Notice for changes to the IEP dated August 24, 2023
12. Email exchange between the parent and Dawn Gresham dated September 28, 2023 at 4:09 p.m. , 4:19 p.m., and 4:54 p.m.
13. Undated text exchange between parent and Emma Alderson
14. District Response to the Allegations, dated October 5, 2023

Background Information

The student is a 16 year old who attends 11th grade at Derby High School in USD #260. The student was reevaluated in October 2022, and she continued to be eligible for special education services as a student with learning disability. Her special education services include pull out special education services for homeroom and math classes, special education support for English, science and social studies classes, and social work services once per week. Her services include having a staff member available for extracurricular activities including sports participation. The student is on track to graduate with a general education diploma in May 2025.

The student does not have a Behavior Intervention Plan; however, many accommodations/ supplementary aids and services and special considerations are written in her IEP to support her behavior as well as her academic learning. Her goals include socially appropriate coping skills and strategies, accurately completing reading and written language assignments in English classes, and accurately completing math assignments. Her IEP case manager is on the PBIS team in the building.

Issue Investigated

Issue One: The USD #260 has, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to afford the parent the opportunity to participate in a meeting held with regard to the IEP of the student.

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The USD #260 has, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to afford the parent the opportunity to participate in a meeting held with regard to the IEP of the student.

Applicable Law

According to federal regulations at 34 C.F.R. 300.322 (a) and state regulations at K.A.R.91-40-17 (a), each public agency must take steps to ensure that one or both of the parents of a child with a disability are present at each IEP Team meeting or are afforded the opportunity to participate, including notifying the parents of the meeting and scheduling the meeting at a mutually agreeable time. The agency must also invite the student after the student reaches 16 years of age (34 C.F.R. 300.322 (b)(2)(i)(B)).

Analysis: Findings of Fact

The complainant alleged that, sometime in May, 2023, a meeting was held by the district which included the sports para who supported the student during the student's extracurricular sports participation. The complainant alleged that during this meeting, the student's sports participation was discussed and that he was not included in this discussion. The parent raised other concerns regarding the soccer coach that are not part of this investigation.

The district responded that the complainant "contends the district violated state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA) when we failed to allow the parent to participate in a meeting about the IEP of the student. The meeting in question surrounded a personnel matter with the para assigned to accompany his student to extracurricular activities, such as basketball and soccer. Parents are not invited to or involved in personnel-related discussions. The discussion surrounded the expectations of the para during extracurricular activities, games, and practices. No agenda was kept for the meeting."

Findings of the investigation upon review of the evidence and conducting the interviews listed above include:

- The student's IEP was amended on January 9, 2023. The PWN associated with that material change to services states: "[The student] will have a staff member available for extracurricular activities such as soccer or basketball daily for the duration of the activity in all extracurricular activities."
- The district and the parent agreed that a special education staff member called a sports para was available during the student's sports participation beginning in January, 2023 for basketball season and continuing through soccer season which ended during May, 2023. The sports para was responsible for providing access to written plays, participation in team sports, and to support the student's behavior. Her position was

supervised by the Assistant Special Education Director. The district and the former sports para agreed that a sports para was not a coaching position.

- The district and the former sports para agreed that the sports para was trained in January, 2023, by the PBIS teacher - IEP case manager on work expectations, including confidentiality and how to support the student according to the student's IEP at a glance.
- The district provided documentation that the student's sports participation was discussed in an IEP meeting attended by the parent on April 27, 2023.
- The district and the former sports para agreed that the special education director met with the sports para and revised the work expectations in around the time of the April 27, 2023 IEP meeting or in early May, 2023.
- The parent reported that the meeting was about the student and issues about the student's participation in sports. The district reported that the meeting was about personnel issues.
- The district and the former sports para agree that implementation of, changes to or progress monitoring of student's IEP were not discussed at this meeting. The district, the parent, and the former para agree that the student's IEP services were not changed as a result of this meeting.

In this case, the student's IEP required that a staff person be available to support extracurricular participation, and that support began in January 2023 during the student's basketball season and continued through the semester with soccer season. In late April or early May, there was a meeting between the special education director and the sports para. At that meeting, the manner in which the sports para was to conduct her job changed from the initial general "team para" approach aimed at mitigating possible stigma associated with provision of special education support to a student specific and directed support method. The meeting held between the special education director and the sports para was not an IEP meeting, and therefore, parental attendance was not required per 34 C.F.R.300.323(a) and K.A.R. 91-40-17(a).

Conclusion

Based on the foregoing, it is *not substantiated* that the USD #260 has, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to afford the parent the opportunity to participate in a meeting held with regard to the IEP of the student.

Summary of Conclusions/Corrective Action

A violation of federal regulations at C.F.R. 300.323(a) and state regulations at K.A.R. 91-40-17(a) was not found based on the facts above. Corrective action is not required.

CORRECTIVE ACTION: 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)