

KANSAS STATE DEPARTMENT OF EDUCATION
SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT
FILED AGAINST
UNIFIED SCHOOL DISTRICT #227
ON JANUARY 24, 2024

DATE OF REPORT FEBRUARY 27, 2024

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." The Southwest Kansas Area Cooperative District (SKACD) provides
special education services for USD #227. USD #227 and SKACD will be referred to jointly as
"the district."

Investigation of Complaint

On January 26 and February 16 and 21, 2024, the investigator spoke by telephone with Trina
Schmidt, Executive Director for SKACD. The investigator spoke by telephone with the parent
on February 2, 2024. On February 20, 2024, the investigator spoke by telephone with Doug
Chaney, Superintendent and Principal of the student's elementary school.

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

- Special Education Referral Notification dated October 20, 2022
- Prior Written Notice for Evaluation or Reevaluation and Request for Consent dated
November 4, 2022
- Notice of Special Education Meeting dated December 1, 2022
- Prior Written Notice for Identification, Special Education and Related Services,
Educational Placement, Change in Services, Change in Placement, and/or Request for
Consent dated December 8, 2022
- Voicemail recording dated November 9, 2023 from the executive director of special
education to the parent
- Letter dated November 13, 2023 from the executive director of special education to
parents of students enrolled in the early childhood special education preschool
- Email dated November 28, 2023 from the speech/language pathologist to the parent
- Minutes of the November 2023 Board of Education meeting for the district
- Prior Written Notice for Identification, Special Education and Related Services,
Educational Placement, Change in Services, Change in Placement, and/or Request for
Consent dated December 7, 2023
- Ready, Willing, and Able letter dated December 13, 2023 from the SKACD to the
student's parents

- Email dated December 19, 2023 from the speech/language pathologist to the parent
- Audio recording of a telephone conversation on January 11, 2024 between the parent and the superintendent/building principal
- Email exchanges dated January 11, 2024 between the parent, the early childhood coordinator to the parent, and the executive director of special education
- Another email exchange dated January 11, 2024 between the early childhood coordinator and the parent
- Email dated January 11, 2024 from the parent to the receptionist for the special education cooperative
- Email dated January 12, 2024 from the receptionist for the special education cooperative to the parent
- Email exchange dated January 19, 2024 between the receptionist for the cooperative and the parent
- Copy of an email dated January 23, 2024 from the parent to the superintendent/building principal, the executive director of special education, and the early childhood coordinator
- Letter dated February 8, 2024 from the executive director to the parent
- Kansas State Department of Education Parent Rights in Special Education (Procedural Safeguards) - February 2020 version
- Timeline prepared by the parent
- Copies of text messages between the parent and district staff

In addition to the documents listed above, the investigator reviewed several audio recordings of telephone conversations between the parent and district staff as well as voicemail messages left for the parent by district staff. The parent also presented audio recordings made prior to and following an executive session of a district board meeting on January 15, 2024.

Background Information

This investigation involves a 4-year old boy who in October 2022 was referred to the district by an area medical clinic for evaluation due to his speech needs. The district sent the parent a referral notification letter and instructions on how to contact the district if she wanted to pursue evaluation to determine eligibility for special education services. The parent subsequently provided written consent for the student to be evaluated.

The student was determined eligible for and in need of special education services. He began receiving those services through a district Early Childhood Special Education program in December 2022. IEP goals were developed to address speech intelligibility and basic readiness skills.

On October 31, 2023, the parent made a referral to the Department for Children and Families alleging that the student had been abused by his preschool teacher. The parent took the

student out of school on October 31, 2023. The parent reports that she spoke with the early childhood coordinator for the district on November 3, 2023, and the coordinator offered to provide speech/language services to the student in the home. The parent reports that on November 9, 2023, she and the executive director of the cooperative spoke by telephone. According to the parent, the executive director offered in-home speech services, but the parent declined.

According to the parent, the speech/language pathologist emailed her information regarding resources for outside speech services on November 12 and 14, 2023. The parent reports that the speech/language teacher also contacted her via text on November 27 and 28, 2023 to offer alternative speech services and notified the parent that the student's IEP was due for review by December 7, 2023. According to the parent, the speech/language pathologist contacted her again on December 1, 2023, but the parent told the therapist that she was not interested in bringing the student into the school setting for services. Dismissal paperwork was sent to the parent on December 19, 2023. In a follow-up telephone call to the parent on December 20, 2023, the executive director discussed the dismissal paperwork and offered the parent the opportunity to come to observe the early childhood special education classroom now being led by a new teacher.

On January 11, 2024, the parent sent an email to the executive director regarding the scheduling of an opportunity to observe the early childhood special education classroom which was now under the direction of a new teacher. The executive director referred the parent to the early childhood coordinator who proposed an observation during the week of January 22nd.

As of the writing of this report, the student had not returned to school.

Issues

The parent's complaint specified nine concerns:

1. The student was abused at the hands of his special education preschool provider;
2. Information about the abuse of my child is being hidden from me;
3. Formal complaint of abuse was not conveyed, in truth, to state officials by the district;
4. The early childhood teacher was allowed to retire while under an active investigation of abuse;
5. The student's information is currently in the hands of his abuser;
6. Our parents' rights were withheld from us;
7. The early childhood teacher has attempted to contact, harass and intimidate the family;
8. The early childhood teacher has demonstrated guilty behavior; and
9. The district has demonstrated disregard for the severity of the parent's situation.

However, pursuant to federal regulations at 31.C.F.R. 300.153, a state department of education may only investigate allegations of a violation of **special education** laws and regulations. This investigator does not have the authority to investigate issues related to the alleged abuse of the student or to address district personnel issues. This investigation focused only on the special education issues contained within this complaint, and this report will address only those issues.

When presenting facts associated with Concern 5 above, the parent stated that she had not been given access to the student's records as required under the Family Educational Rights and Privacy Act (FERPA). This issue was investigated and will be addressed below as will the parent's assertion under Concern 6 that parental rights have been withheld. Concerns 1, 2, 3, 4, 7, 8, and 9 were not investigated.

Issue Five

(amended to address only the special education-related component):

The district has failed to provide the parent with access to the student's records.

Parent's Position

The parent asserts that the district did not promptly make available to her all records related to the student. The parent further contends that the district has told her that some of the records requested by the parent are no longer available.

Applicable Statutes and Regulations

Confidentiality of education records is a basic right shared by all students in public schools and their parents. These fundamental rights are described in the Family Educational Rights and Privacy Act (FERPA) of 1974, as amended. The federal regulations relating to FERPA are available at <https://www2.ed.gov/policy/gen/reg/ferpa/index.html> as well as at <https://www.ksde.org/Default.aspx?tabid=337>. In addition, Kansas Special Education Regulations at K.A.R. 91-40-50 have adopted by reference provisions in 34 C.F.R. 300.612 through 300.624, regarding parental access to education records and confidentiality of those records.

Each school district must annually notify parents of their rights under the Federal Education Rights and Privacy Act (FERPA). This notice must inform parents or adult students that they have the right to:

1. Inspect and review the student's education records;
2. Seek amendment of the student's education records that the parent or eligible student believes to be inaccurate, misleading, or otherwise in violation of the student's privacy rights;

3. Consent or refuse to consent to disclosures of personally identifiable information contained in the student's education records, with some exception (34 C.F.R. 99.310); and
4. File a complaint under 34 C.F.R. 99.63 and 99.64 concerning alleged failures by the educational agency or institution to comply with the requirements of FERPA.

Additionally, the notice must include all of the following:

- The procedure for exercising the right to inspect and review education records.
- The procedure for requesting amendment of records.

The school district may provide this notice by any means that are reasonably likely to inform the parents or eligible students of their rights.

At K.A.R. 91-40-50, state regulations define "education records" as "any document or medium on which information directly related to one or more students *is maintained by a participating agency*[emphasis added]..."

Under certain circumstances, a teacher's working file would not be considered to be part of the child's record. FERPA regulation 34 C.F.R. 99.3, states that the term "education records" does not include records that are kept in the sole possession of the maker, are used only as a personal memory aid, and are not accessible or revealed to any other person except a temporary substitute for the maker of the record.

A district must comply without unnecessary delay with a parental request to review their child's education records and before any meeting regarding an IEP, or any hearing pursuant to Secs. 300.507 and 300.521-300.528, and in no case more than 45 days after the request has been made. (See 34 C.F.R. 300.613.)

Investigative Findings

The handbook for the student's elementary school contains the following statement under the section entitled "Student Records:"

"[The district] regards all pupil records, except directory information, to be confidential. The Board has established procedures and safeguards which assure that parents are able to see and review their child's school records and that those records are not open to other people who should not see them."

The investigator was unable to locate the referenced Board procedures regarding access to records and contacted the superintendent/building principal on February 20, 2024 to determine how parents were informed about these procedures. According to the superintendent/building principal, FERPA information is provided annually to parents in the student enrollment packet for all students in grades K-12. However, the superintendent/building principal stated that FERPA information has not been included in the enrollment packet for preschool students such as the student at the center of this complaint.

The superintendent/building principal also reported that FERPA information had been included in the handbook for the elementary school in which the student's early childhood special education preschool program is located. However, that information was inadvertently omitted from this year's version of the handbook.

Absent any specific guidance on how to request access to the student's records, the parent contacted the superintendent/building principal on January 11, 2024 to make her request. According to the parent, the superintendent/building principal told her that the records were managed by the cooperative, and he would have the early childhood coordinator contact the parent.

In an email to the parent dated January 11, 2024, the early childhood coordinator references the parent's request for the student's records, noting that she had been informed of the parent's request by the superintendent/ building principal. The early childhood coordinator wrote:

"You can easily obtain these records by contacting the [cooperative] office...They will be more than happy to assist you."

The parent sent an email to the receptionist for the special education cooperative on January 11, 2024 writing:

"I am the mother of [the student] and would like to make a request for his school records and any info you may have on him..."

The receptionist responded to the parent via email on January 12, 2024 writing:

"...here is the form can you please fill out, sign it and return to me with a copy of you [sic] ID or Drivers Licence [sic]."

In a telephone conversation with the investigator on February 2, 2024, the parent acknowledged that she had received the student's special education records but stated that in an effort to gain a clearer understanding of an event that occurred in the Spring of 2023, she had sought to obtain additional records from the school. According to the parent, the student had come home from school with a "goose egg" on his forehead and a "split lip." The parent stated that she had spoken with the former early childhood special education teacher about the incident, and the teacher had told her that a disciplinary office referral would be made regarding the student. The parent believed that there should have been a record of that referral or other records documenting the events.

On January 19, 2024, the parent left a voicemail for the superintendent/building principal asking about attendance and disciplinary records for the student. In a telephone call to the parent, the superintendent/building principal stated that he was unable to access attendance records for the student through the student database. According to the superintendent/building principal, information on the student's attendance had been kept in a

handwritten attendance book maintained by the former early childhood teacher for her personal use. The parent states that she then sent an email to the superintendent/building principal submitting a formal request for access to the student's records.

On January 19, 2024, the parent also sent an email to the receptionist for the special education cooperative stating:

"Was the IEP the only info in his file? I am not seeing any disciplinary reports or his school attendance record."

The receptionist responded on January 19, 2024 writing:

"...you will need to contact his school for the information you are requesting. We just have the special education records and I do not see any of that in his file."

In an email dated January 23, 2024 sent to the superintendent/building principal, the executive director of special education, and the early childhood coordinator, the parent wrote:

"I was informed that all of my student's records were not in your possession. I did not give permission for those records to go anywhere out of your possession. I am entitled to my child's records for 5 years after they graduate. These records are put into a [student information system] to make sure that they are tracked in case of movement of districts. Why did [the superintendent/building principal] inform me on 1/19/24 that [the student's former early childhood special education teacher] is still in possession of my son's records, when in reality it appears you do not wish to give me access to them...Below is straight from the Kansas Special Education handbook:

Each school must annually notify parents of their rights under FERPA. The notice must inform parents or adult students that they have the right to: 1. Inspect and review the student's education records; 2. Seek amendment of the student's education records that the parent or eligible student believes to be inaccurate, misleading, or otherwise in violation of the student's privacy rights; 3. Consent or refuse to consent to disclosures of personally identifiable information contained in the student's education records, except to the extent that FERPA, 34 C.F.R. 99.31, authorizes disclosure without consent; and 4. File a complaint under 34 C.F.R. 99.63 and 99.64 concerning alleged failures by the educational agency or institution to comply with the requirements of FERPA. Additionally, the notice must include all of the following: • The procedure for exercising the right to inspect and review education records. • The procedure for requesting amendment of records. The school district may provide this notice by any means that are reasonably likely to inform the parents or eligible students of their rights. The school shall effectively notify parents who have a primary or home language other than English. (34 C.F.R. 99.7) This notice should adequately inform parents prior to any identification, location, or evaluation activity taking place."

On February 8, 2024, the executive director sent a letter to the parent in response to the parent's request for the student records. According to the executive director, the district had already provided the parent with all educational records related to the student except for his attendance record. The executive director wrote:

"[The student's school] has not been keeping attendance for prek students into their student database. Therefore, all attendance records were simply kept in the prek classroom. When [the former early childhood special education teacher] left, she left the attendance records book on her desk for the new teacher to use. (This was verified by [the former teacher], the new staff, and [the early childhood coordinator]). Unfortunately, in the transition, the attendance book was accidentally thrown in the trash as they were cleaning the room.

You asked for attendance and discipline records. [The superintendent/building principal] has no disciplinary record on [the student]. As far as attendance, [the student's school] will be entering all students in their student database and moving forward all attendance is kept in the main office..."

Summary and Conclusions

The parent requested access to the student's educational records on January 11, 2024. The superintendent/building principal promptly asked the early childhood coordinator to contact the parent regarding her request. The parent contacted the cooperative office, reiterated her request, and was timely provided copies of the student's special education records. The parent has acknowledged to the investigator that she received the student's special education records prior to the filing of this complaint.

When the parent determined that the records she had been given did not include either attendance records or discipline records, she again contacted district staff to request those specific records.

It was subsequently determined that the district had not maintained an educational record regarding the attendance of students in the early childhood special education classroom. The only attendance-related document that was being kept was a personal record maintained by the former special educational classroom teacher. When she left the district, the former teacher left that record in her classroom where it was observed by staff who came into the classroom over the ensuing days. When the parent made her request to access attendance records for the student, staff searched the classroom for the teacher's record but determined that the teacher's personal record had been discarded during the process of cleaning the classroom in preparation for the new teacher.

The parent also sought discipline records regarding the student, but it was determined that no discipline records regarding the student were maintained by the district.

Because the district in a timely manner provided the parent with all educational records being maintained on this student, a violation of special education statutes and regulations *is not substantiated* regarding parental access to the student's educational records.

However, in the process of investigating this issue, the investigator determined that the district failed to provide the parents of students in the early childhood classroom - including the

parent who filed this complaint - with the required annual FERPA notice which would have provided guidance to these parents regarding how they could request access to their children's educational records. Under these circumstances, a violation of special education statutes and regulations *has been identified*.

Issue Six

Our parent rights have been withheld from us.

Parent's Position

The parent asserts that the district did not provide her with a copy of her parent rights until 7 weeks after the parent had decided to keep the student out of school. The parent contends that the district provided her with a prior written notice form without offering an opportunity for a meeting, mediation, or due process.

Applicable Statutes and Regulations

Federal regulations, at 34 C.F.R. 300.504, specify when parents must be provided with notice regarding their procedural safeguards (Parent Rights). A copy of the procedural safeguards available to the parents of a child with a disability must be given to the parents only one time a school year, except that a copy also must be given to the parents—

- Upon initial referral or parent request for evaluation;
- Upon receipt of the first State complaint and upon receipt of the first due process complaint in a school year;
- In accordance with the discipline procedures in § 300.530(h); and
- Upon request by a parent.

While many districts provide parents with a copy of their procedural safeguards more frequently than specified above, these are the only times when special education law requires that they be provided.

Parents may elect to receive the Parent Rights Notice by electronic mail communication, if the school makes that option available (34 C.F.R. 300.505). If the Parent Rights Notice is provided electronically, the school should have a copy of the email sent to the parent and documentation that the notice was received.

At K.A.R. 91-40-51, Kansas statutes address the filing of a formal complaint. The formal complaint must be in writing and signed by the person or organization making the complaint. The complaint must state that the school is not complying with the requirements of the Individuals with Disabilities in Education Act (IDEA), the Kansas Special Education for Exceptional Children Act, or the corresponding federal or state regulations and give the facts upon which the statement is based. When the complaint involves a specific child, the complaint must also include the following:

- The child's name and address of residence, or other contact information if the child is a homeless child or youth;
- the name of the school the child is attending;
- a description of the problem involving the child; and
- a proposed resolution to the problem, if a possible resolution is known and available to the complainant.

A complaint must be mailed or hand-delivered to the Kansas State Department of Education (KSDE), Special Education and Title Services, Landon State Office Building, 900 SW Jackson, Suite 620, Topeka, KS 66612. Alternatively, complaints may be emailed to formalcomplaints@ksde.org. Emailed complaints are filed when KSDE staff open the email. Additionally, a copy of the complaint must be sent to the school district against which the complaint is filed.

The due process hearing provides another avenue whereby disagreements about the identification, evaluation, educational placement, and/or provision of a free appropriate public education for students with exceptionalities may be adjudicated.

To make their request for a due process hearing, the party filing the due process complaint, or the attorney for that party, must send a copy of the Due Process Complaint Notice to the other party and to the Kansas State Department of Education (KSDE), Special Education and Title Services (SETS). This notice is confidential and must contain the following information:

- Name of the child;
- address of the child's residence (or in the case of a homeless child or youth, available contact information for the child);
- name of the school the child is attending;
- description of the nature of the problem and the facts that form the basis of the complaint; and
- a proposed resolution of the problem. (K.S.A. 72-3415(a)(1)(B))

When the school receives this request for a due process hearing, school personnel are required to:

- inform parents about mediation;
- inform parents of free or low-cost legal services (34 C.F.R. 300.507); and
- provide a copy of the Parent Rights document for the first due process complaint in the school year (34 C.F.R. 300.504).

Investigative Findings

The district received a referral regarding the student from the area infant-toddler program and sent the parent a prior written notice letter regarding that referral as well as a packet of additional information on October 20, 2022. Included in the referral packet was a copy of procedural safeguards. The parent signed and returned a referral form to the district on November 8, 2022.

An additional copy of procedural safeguards was given to the parent when she was provided with prior written notice of the district's proposal to conduct an initial evaluation on November 11, 2022. According to the prior written notice form:

"The legal education decision-maker was provided a copy of Parents Rights in his/her native language on 11/11/2022 by the following method: hand delivered."

On December 8, 2022, upon completion of an initial evaluation to determine the student's eligibility to receive special education services, a meeting was conducted to review the results of that evaluation. The parent was provided with written notice of that meeting on December 1, 2022. According to the "Notice of Meeting Acknowledgement" section of the meeting notice form, the parent acknowledged on December 8, 2022 that she had been provided with a copy of the "Parents' Rights/Procedural Safeguards in [her] native language."

After the student was determined to be eligible for and in need of special education services, the district proposed an Individual Education Plan (IEP) for the student. In the section of the proposed IEP entitled "Parent Notifications," the box indicating that "parents/legal education decision makers with the same listed address were given/sent/offered one copy of the Parental Rights (Procedural Safeguards) in their Primary Language" was checked "Yes." That checked section documented that the parents were given their procedural safeguards "in person."

At the meeting on December 8, 2022, the district presented the parent with prior written notice (PWN) of a proposal regarding the provision of special education services to the student. The parent gave written consent for the implementation of the district's proposed services by checking a box on the PWN form which stated:

"I give consent for the special education placement and services action(s) specified in this notice...I have been provided and/or offered a copy of my parental rights (procedural safeguards) in my native language."

On October 31, 2023, following an incident of alleged abuse of the student by his preschool teacher, the parent contacted the superintendent/building principal. According to a timeline prepared by the parent, she informed the superintendent of the alleged abuse and told the superintendent/building principal she would be "pulling" the student from school as of October 31, 2023 following the class Halloween party which she would be attending. While the student did not return to school on November 1, 2023, the parent did not complete any formal

withdrawal of the student from school and did not at that time withdraw consent for the provision of special education services.

According to the parent's prepared timeline, she spoke with the early childhood coordinator on November 1, 2023. The parent wrote in her timeline that the early childhood coordinator "would be making a formal report" regarding the parent's concerns and report of abuse of the student.

The parent reports that she was called by the former early childhood special education preschool teacher on November 1, 2023. According to the parent, the teacher left voicemails for the parent regarding school attendance.

On November 9, 2023, the executive director left a voicemail message for the parent in which she stated that she would like to explore options for providing the student with special education services at a location other than the student's neighborhood school.

In a telephone conversation with the investigator on February 2, 2024, the parent stated that she considered having the student return to school for his speech services, but felt that being in the building might further traumatize the student. The parent decided that the student's needs were best served through a combination of home schooling and outside private speech therapy.

On December 19, 2023, the speech/language pathologist sent the parent an email with forms verifying that the student "was taken out of school for the remainder of the year." Attached to the email was a prior written notice form regarding the parent's withdrawal of the student from special education services. Also attached to the email was a "ready, willing, and able" letter telling the parent that the district was prepared to provide the student with the special education and related services outlined in his current IEP. A copy of the parent rights document was also attached to the email.

The parent did not provide written consent for the discontinuation of special education services to the student. However, in her written complaint, the parent stated that she had received a copy of her parent rights on December 19, 2023. The parent subsequently confirmed the December 19, 2023 receipt of rights during a telephone call with the investigator on February 2, 2024.

The parent exchanged emails with the early childhood coordinator on January 11, 2024 regarding the scheduling of an observation in the student's former classroom where a new early childhood teacher was in place. In an email sent at 1:02 PM on that date, the parent asks the following:

"If were to wait until the 22nd [for the observation], where does that put us with the timeline of the formal complaint process I started with you on 11/1/23? I have not received any details or update of my due process complaint or the state complaint. I did receive "ready,

willing and able" paperwork from the speech teacher...the final school day before winter break...[b]ut that is the first I have received information of my parental rights."

The early childhood coordinator replied:

"Do you have time for me to call you now? I must not have all the information."

Later that same day, the early childhood coordinator sent an email to the parent stating:

"Regarding the due process complaint you mentioned, I have forwarded your email to our director...for such matters are directly handled by our director."

On January 23, 2024, the parent sent an email to the superintendent/building principal, the executive director of special education, and the early childhood coordinator stating:

"I would like to file an official complaint against [the district] for not protecting my child's safety and rights. They have violated our rights and freedoms and I would like the information on how to file a formal complaint with the State. This is required that you give me access to this information..."

On January 23, 2024, the parent sent the district an email in which she made a request for a state complaint. The executive director sent the parent the form she would need to complete in order to make a formal complaint.

A formal complaint by the parent was received by the Dispute Resolution Coordinator for the department of Special Education and Title Services (SETS) at the Kansas State Department of Education (KSDE) on January 24, 2024. No previous complaint nor any previous request for a due process hearing had been submitted by the parent prior to the receipt of this complaint. On January 24, 2024, the Dispute Resolution Coordinator sent a letter via email to the parent and the district acknowledging receipt of this complaint. In her email, the coordinator attached a copy of parent's rights in special education "in compliance with 34 C.F.R. 300.504."

No evidence was presented to show that the parent had made any specific request for a copy of parent rights during either the 2022-23 or the 2023-24 school years. No disciplinary actions were initiated against the student during either school year that would have required the district to present the parent with procedural safeguards.

Summary and Conclusions

During the 2022-23 school year, the district provided the parent with copies of parent rights/procedural safeguards on three occasions:

- 1) On October 20, 2022 when the parent was notified that the district had received a referral regarding the student from the area infant-toddler agency;
- 2) on November 11, 2022 when consent for the initial evaluation was requested; and
- 3) on December 8, 2022 when a meeting was conducted to review the results of the evaluation and to subsequently develop an IEP for the student.

The parent's receipt of procedural safeguards was documented on the consent for evaluation, the notice of meeting form, the December 8, 2023 IEP for the student, and the prior written notice wherein the parent gave consent for the implementation of special education services to the student.

In speaking with the parent on February 2, 2024, it was apparent to the investigator that the parent did not have a clear understanding of the difference between a formal complaint, a due process hearing, and a district level complaint. The parent shared her concerns regarding the alleged abuse of the student with the early childhood coordinator on November 1, 2023, and the coordinator told the parent she would take those concerns to others. The parent appears to have believed that a formal complaint or due process had been initiated by that conversation and that she should have been provided with procedural safeguards. However, absent the filing of specific paperwork by the parent with SETS and absent notice from SETS that the parent had filed a formal complaint or requested a due process hearing, the district did not at that point have a requirement to provide the parent with a copy of her parent rights.

On December 19, 2023, the speech/language pathologist sent an email to the parent that included prior written notice of the district's proposal to honor the parent's request to dismiss the student from special education services. Along with the prior written notice form, the speech/language pathologist included a copy of the procedural safeguards/parent rights document. While the parent did not give consent for the district's proposed action, the parent acknowledged in her complaint and during a telephone conversation with the investigator on February 2, 2024 that she did receive the procedural safeguards document.

Evidence shows that the parent received copies of procedural safeguards more than once during both the 2022-23 and 2023-24 school years. The district provided the parent with procedural safeguards when requesting consent for the student's initial evaluation in 2022 as required. SETS provided the parent with a copy of those safeguards when this complaint - the first formal complaint from this parent during this school year - was received. A violation of special education statutes and regulations *is not substantiated* on this issue.

Corrective Action

Information gathered in the course of this investigation has determined that there was noncompliance with special education statutes and regulations on issues associated with this complaint. Specifically, a violation has been identified with regard the Family Educational Rights and Privacy Act (FERPA) of 1974, as amended, and to K.A.R. 91-40-50 adopted by reference to provisions in 34 C.F.R. 300.612 through 300.624, regarding parental access to education records and confidentiality of those records.

Therefore, USD #227 is directed to take the following actions:

- 1) Submit to Special Education and Title Services (SETS) within 21 calendar days of the date of this report, a written statement of assurance stating that it will comply with FERPA and K.A.R. 91-40-50 by providing parents with annual notice regarding their right to access the educational records of their student(s).
- 2) By no later than 21 calendar days of the date of this report, provide to SETS a plan to ensure that the parents of all current preschool students in this district including all early childhood special education preschool students have been provided with an annual FERPA notice.
- 3) By no later than March 30, 2024, provide to SETS verification that strategies are in place to ensure that annual FERPA notification will be provided to all parents in the district for the 2024-25 school year and subsequent years.
- 4) By no later than September 1, 2024, submit to SETS evidence that annual FERPA notice has been provided to all parents in the district for the 2024-25 school year.
- 5) Further, USD #227 shall, within 20 calendar days of the date of this report, submit to SETS one of the following:
 - a. A statement verifying acceptance of the corrective action or actions specified in this report;
 - b. a written request for an extension of time within which to complete one or more of the corrective actions specified in the report together with justification for the request; or
 - c. a written notice of appeal. Any such appeal shall be in accordance with K.A.R. 91-40-51(f).

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)