

KANSAS STATE DEPARTMENT OF EDUCATION
SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT
FILED AGAINST
UNIFIED SCHOOL DISTRICT #255
ON MARCH 29, 2024

DATE OF REPORT APRIL 29, 2024

This report is in response to a complaint filed with our office by -----, advocate, on behalf of ----. For the remainder of this report, ----- will be referred to as "the student." ----- will be referred to as "the complainant" or "the advocate." ----- will be referred to as "the student's mother" or "the parent." USD #255 contracts with the South Central Kansas Special Education Cooperative (SCKSEC) for the provision of special education and related services to students enrolled in the district. In the remainder of this report, "the district" will refer to both of these agencies.

Investigation of Complaint

The investigator spoke with the complainant on April 5, 2024. On April 8, 2024, the investigator spoke by telephone with Richard Spencer, Assistant Director of Special Education for SCKSEC. On April 11, 2024, the investigator spoke by telephone with the student's mother and the complainant in a conference call. The investigator spoke with Kaynette Scheck, building principal, and Lindsay Rhodes, special education teacher, in a conference call on April 16, 2024. The investigator spoke by telephone with Dr. Meagan Etheridge, the Director of Special Education for the SCKSEC on April 19, 2024.

On April 9, 2024, the student's mother gave written consent for the investigator to share personally identifiable information with the complainant.

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

- Psychological Evaluation dated June 6, 2021
- Basis for Eligibility Determination dated August 31, 2022
- IEP for the student dated February 6, 2023
- Email exchange dated November 10 through 13, 2023 between the special education teacher and the Coaching Specialist for the district
- Notice of Special Education Meeting dated November 13, 2023
- IEP for the student dated November 27, 2023
- Email exchanges dated November 27, 2023 between the special education teacher, the school psychologist, the occupational therapist, the physical therapist, and the speech/language pathologist

- On-task data sheet covering the period of November 7 through 20, 2023
- Email dated January 4, 2024 from the physical therapist to the special education teacher
- Prior Written Notice for Identification, Special Education and Related Services, Educational Placement, Change in Services, Change in Placement, and/or Request for Consent signed by the student's mother on January 9, 2024
- Email dated January 11, 2024 from the special education teacher to the speech/language pathologist
- Prior Written Notice for Evaluation or Reevaluation and Request for Consent dated January 11, 2024
- PowerSchool grade report for the student's Science class for February 7 - 9, 2024
- Email dated February 8, 2024 from the student's mother to the special education teacher
- Email dated February 9, 2024 from the special education teacher to the student's mother
- February 16, 2024 email exchange between the special education teacher and the student's mother
- Functional Behavior Assessment (FBA) and Behavior Intervention Plan dated March 21, 2024
- Email exchanges dated April 3, 2024 between the building principal and the student's general education teacher for English/Language Arts and Social Studies and his general education teacher for Math and Science
- Notice of Meeting dated April 4, 2024
- Speech/Language Evaluation Report dated April 4, 2024
- Report of assessments conducted by the school psychologist on April 4 and 5, 2024
- Response to Request for Assistive Technology Assistance dated April 2024
- Basis for Eligibility Determination dated April 15, 2024
- Term Grades for the student for the 2023-24 school year
- On-line Academic Calendar for the district for the 2023-24 school year
- Examples of modified assignments for ELA, social studies, and science
- Transcriptions of email correspondence between the parent and school staff during the periods of February 7, 2023 and May 8, 2023 and August 23, 2023 and April 10, 2024

Background Information

This investigation involves an 11-year old boy who is enrolled in the 5th grade in his district's elementary school. According to the student's mother, he was adopted at age one month. He has three siblings who were also adopted.

In a telephone conference call with the investigator and the complainant on April 11, 2024, the student's mother reported that the student was diagnosed at an early age with ADHD and Oppositional Defiant Disorder (ODD). He participated in at-risk preschool programs to address socialization needs and received in-home support to address behavioral issues. A psychological evaluation was conducted through a private agency in June 2021. That evaluation confirmed the student's ODD diagnosis and determined the presence of a Recurrent Depressive Disorder. The student continues to receive support through a local mental health agency.

The student first received special education support through the district at age 3. As a part of a 3-year reevaluation completed in August 2022, the student was determined eligible for special education services because of deficits in the areas of reading comprehension, reading fluency, and math calculations.

According to the student's current IEP, he receives special education support from a paraeducator in the general education classroom during the "independent portions" of his reading, math, social studies, and science classes. He also is provided with a number of accommodations/modifications as well as an electronic reader to assist with reading of books for the Accelerated Reading program as well as "more complex ELA [English Language Arts] novels."

The complainant states that she is a self-employed advocate who represents students and families across the country in addressing special education issues. She has entered into a contractual arrangement with the parents to represent them with regard to this complaint. By report of the advocate, she has communicated with the student's building principal, his special education teacher, and the district superintendent.

Issues

Five issues were identified in this complaint:

1. The district has failed to implement the accommodations specified in the student's IEP;
2. the district failed to complete a special education evaluation in a timely manner;
3. the district has denied the student a free appropriate public education (FAPE) because the service minutes specified in his IEP were not provided;
4. the district failed to write an IEP that was reasonably calculated to challenge the student to make progress; and
5. the district failed to collect data and accurately report the student's lack of progress on goals and failed to properly address the student's lack of progress.

Issue One

The district has failed to implement the accommodations specified in the student's IEP.

Complainant's Position

The complainant asserts that the student has not been allowed to use headphones to listen to music and has not been provided movement breaks. The complainant contends that there has been no reduction in the amount of math problems assigned, and assignments have not been "chunked" as required. According to the complainant, the district took no action regarding requests from the student's mother that the student be provided with these accommodations.

District's Position

It is the position of the district that the student has been provided with all of the accommodations specified in his February 6 and November 27, 2023 IEPs, including those specified in this complaint.

Applicable Statutes and Regulations

Federal regulations, at 34 C.F.R. 300.101, require states to ensure that a free appropriate public education (FAPE) is made available to all children with disabilities residing within the state. Accordingly, Kansas regulations at K.A.R. 91-40-2(b)(1) require that each school district makes FAPE available to each child with a disability residing in its jurisdiction. Federal regulations, at 34 C.F.R. 300.17, define FAPE, in part, as special education and related services provided in conformity with an Individualized Education Program (IEP).

Investigative Findings

An annual review of the student's IEP was completed on February 6, 2023. In attendance were the student's mother, the building principal, the student's special education teacher, and his general education teacher. The IEP team determined that the student should be provided with the following accommodations:

- a movement break for five minutes each period whenever the student feels overwhelmed or is having an off-task behavior issue;
- preferential seating when in a group of students during class time;
- whenever a timed test is offered in class, the test will not be used for grading; and
- access to the resource room for a quiet environment when the student is having trouble focusing on tasks.

The student's IEP was revised on November 27, 2023. According to the November 2023 IEP, the student was to be provided with all of the accommodations included in his February 2023 IEP as well as the following additional accommodations:

- a 25% reduction in the amount of problems on worksheets given for class independent work;
- permission to listen to music using headphones during independent work time to assist the student to focus;
- allowing up to 30-45 seconds of wait time for responses to oral questions about lesson content;
- "chunking" of assignments that are over two pages in length;
- allowing the student to type written assignments when the assignment is multiple sentences in length; and
- receiving a copy of class notes any time note taking is assigned in ELA, math, science, and social studies when the notes are more than 3 pages in length.

In a conference call with the investigator and the complainant on April 11, 2024, the student's mother stated that the student has reported to her that these accommodations have not been provided to him. Neither the complainant or the parent provided specific examples of the district's failure to implement accommodations noting that it is "difficult to prove that something hasn't been done." However, the parent stated that she would anticipate that she should see folds in his worksheets which would indicate that a given assignment has been chunked, but she reported that the assignments brought home by the student have not been folded in the manner described.

The student has been enrolled in seven general education classes for the 2023-24 school year:

- Band,
- Math,
- Physical Education,
- Reading (English Language Arts),
- Science,
- Social Studies, and
- Vocal Music.

English Language Arts (ELA)/Social Studies: According to an email from the student's ELA (Reading) and Social Studies teacher to the building principal, the student is always free to get up and move around. The teacher states that she has never stopped the student from a movement break or forced him to be seated when he was trying to move around. According to the teacher, the student is frequently reminded that he can go to the resource room. While he sometimes exercises that option, he does not go often.

In her email, the teacher stated that she has never prohibited the student from listening to music or stopped him from listening to music if he arrives at her classroom doing so.

With regard to the reduction in the amount of problems required for daily assignments, the teacher states:

"I take 25% of the questions off of his daily classwork assignments, including his reading/word analysis, and conventions. I don't reduce the ...bell work [review questions posted on the board for all students to work on at the beginning of the school day prior to the beginning of the instructional day], but I also don't penalize him if he doesn't get it done in the allotted time frame when they come in (he almost always does though)."

Examples of modified ELA and Social Studies assignments showing a reduction in requirements were provided by the district.

Because classroom assignments for all students have been scaled by the teacher to be broken into smaller sections, there has not been a time when the student was given an assignment over two pages in length - the length of an assignment that must be "chunked" as specified in the student's November 27, 2023 IEP.

The student has earned grades of B-, B+, and A (82%, 89%, and 94%) over the first three quarters of the school year in his Reading (ELA) class. His Social Studies grades for that same period have been A-, A, and A (92%, 93%, and 97%).

Math and Science: The general education teacher in charge of the student's math and science instruction stated in an email to the building principal that while she does not routinely ask the student if he needs a movement break or if he wants to go to the resource room, the student has not asked to be allowed to exercise either option. The teacher stated that she "check[s] in with [the student] multiple times in a period to see if he needs anything." The teacher also reported that the student "used to listen to music frequently," he hasn't done so recently but is aware that the accommodation is available to him.

In the conference call of April 11, 2024, the student's mother confirmed that the student's math assignments are being reduced.

The student has earned grades of A-, B, and B- (90%, 86%, and 80%) over the first three quarters of the school year in his Math class. His Science grades for that same period have been B, A, and A (84%, 95%, and 95%).

An example of how the student's Science assignments are reduced was provided by the district.

Band, Physical Education, and Vocal Music: In none of these courses is the student assigned homework or given assignments of more than two pages in length. These classes afford the student opportunities for movement. It is reasonable to assume that the use of headphones would interfere with class activities.

Summary and Conclusions

The complainant provided no direct evidence to support the allegation that the district has failed to provide the student with the accommodations specified in his November 27, 2023 IEP. No specific instances when the student was denied a movement break or the use of

headphones was cited in the complaint or reported by the complainant or the student's mother.

The student's mother acknowledges that his math assignments have been reduced. Additionally, the district has provided multiple examples of how accommodations have been implemented in the student's ELA, science, and social studies classes. The completion of multi-page assignments is routinely accomplished by the entire class over multiple days. No assignments have been given to the student that have required him to complete more than two pages on his own at any one time, so implementation of the chunking accommodation has not been needed.

The structure of the student's music, band, and PE classes have not necessitated the implementation of accommodations which would in some instances interfere with class activities.

A violation of special education statutes and regulations *is not substantiated* on this issue.

Issue Two

The district failed to complete a special education evaluation in a timely manner.

Complainant's Position

The complainant asserts that during an IEP team meeting for the student held on November 27, 2023, additional evaluations were requested by the student's mother and agreed to by the district. According to the complainant, these evaluations had not been completed at the time this complaint was filed even though the complainant had contacted the student's special education teacher and the building principal to inquire about the status of the evaluation.

District's Position

The district acknowledges that during the November 27, 2023 IEP team meeting, the student's mother did request additional testing be completed in the areas of assistive technology, dyslexia, dysgraphia, and language pragmatics. After receiving parental consent for the reevaluation in January 2024, staff began the reassessment process and shared the results of the reevaluation at a meeting conducted on April 15, 2024.

Applicable Statutes and Regulations

Any evaluation that is conducted for a child currently identified with an exceptionality is considered a reevaluation. Schools must ensure that a reevaluation of each child with an exceptionality is conducted if conditions warrant a reevaluation, or if the child's parents or teacher requests a reevaluation, but at least once every three years (K.S.A. 72-3428(h)(1)(B)).

When parents make a request for an evaluation (whether oral or written), the Kansas State Department of Education (KSDE) has determined that, unless there is an unusual

circumstance, 15 school days is a reasonable time for providing parents with a Prior Written Notice of the district's proposal to conduct the evaluation or the district's refusal to conduct the evaluation (See KSDE Memo, "Reasonable Time" to respond to parent request for evaluation, January 8, 2002, at <https://www.ksde.org/Default.aspx?tabid=614>). KSDE also applies this same standard with regard to any parent request related to identification, evaluation, placement, or the provision of FAPE. Accordingly, unless there is an unusual circumstance, districts must provide parents with a Prior Written Notice within 15 school days in response to any parent request for a reevaluation. Parental consent must be obtained before a district can conduct a reevaluation (K.S.A. 72-3428(j) and K.A.R. 91-40-27(a)(1)).

Kansas has established a 60 school-day timeline for conducting the initial evaluation consistent with federal regulations (K.A.R. 91-40-8(f); 34 C.F.R. 300.301(c)). By extension, that timeline also applies to reevaluations. The timeline starts upon receipt of written parental consent to conduct the reevaluation, and ends with the IEP team meeting to review the results of the reevaluation and to make any necessary revisions to the student's IEP.

Whenever a school proposes to conduct a reevaluation, the school must provide Prior Written Notice to the parents of the child that describes any evaluation procedures the school proposes to conduct (K.S.A. 72-3428(b); K.S.A. 72-3430; 34 C.F.R. 300.304(a)). The purpose of providing notice to the parents is so they understand what action the public agency is proposing (in this case, to conduct a reevaluation) and the basis used for determining the action is necessary. The Prior Written Notice must include - among other specific requirements - a description of the action proposed by the agency, which must include a description of any evaluation (K.S.A. 72-3428(b); 34 C.F.R. 300.304(a)(1)). Districts are not required to obtain parental consent before reviewing existing data as a part of an evaluation, reevaluation, or a Functional Behavior Assessment (FBA) (K.A.R. 91-40-27(e)(1)).

Investigative Findings

An IEP team meeting for the student was conducted on November 27, 2023. In attendance were the student's mother, the building principal, the student's special education teacher, two of his general education teachers, and a mental health liaison. The complainant participated virtually.

According to the student's November 27, 2023 IEP, the parent asked for additional testing to be conducted related to assistive technology, dyslexia, dysgraphia, and language pragmatics. According to the student's IEP, the parent also requested a "formal behavior assessment." The school psychologist - the individual whose responsibility it is to complete such special education paperwork for the district as evaluation consent forms - was not in attendance at the meeting. However, the special education teacher who was present sent a message to the school psychologist - as well as the speech/language pathologist, the occupational therapist,

and to the physical therapist who oversees assistive technology assessments - to make them aware of the parent's request.

On January 11, 2024, the special education teacher sent the parents prior written notice of the district's proposed reevaluation - 22 school days after the parent's expressed request for reevaluation at the November 27, 2023 IEP team meeting. On January 17, 2024, the parent provided written consent for the reevaluation, thereby beginning a 60 school day timeline for completion which would end on April 22, 2024.

On February 8, 2023, the student's mother sent an email to the student's special education teacher, writing:

"I wanted to connect and see if [the student] has had any testing done."

The special education teacher responded to the student's mother on February 9, 2024 stating:

"I know there has been some observations toward the functional behavior assessment. I will email [the school psychologist] to see where he is on this. Then let you know (sic)."

On February 16, 2024, the student's mother sent another email to the special education teacher writing:

"...Also this occurred: At IEP meeting on 11-27-23, mom has requested an evaluation done on [the student's] language pragmatics. The speech language specialist was notified through email on 11-27-202 (sic)."

The special education teacher responded via email on February 16, 2024, writing:

"I will talk with the speech and language specialist about his testing."

No evidence of any further follow-up with the parent was provided by the district. In a telephone conference call with the building principal and the investigator on April 16, 2024, the special education teacher stated that she and the parent had talked about the evaluation at some point when the parent came to the school, but no documentation of that discussion was provided to the investigator.

Evaluation reports provided by the district show that the speech/language pathologist conducted an evaluation on April 3, 2024. The Wechsler Intelligence Scale for Children - Fifth Edition (Wisc-V) was administered by the school psychologist on April 4, 2024 as was the Woodcock-Johnson test of achievement and the Beery Test of Visual Motor Integration. Four observations related to the development of an FBA were conducted (January 31, February 15, March 28, and April 3, 2024). A report developed in April 2024 by the Assistive Technology Team Representative was provided by the district.

Notice of a special education meeting to review the results of the reevaluation and discuss possible changes to the student's IEP was emailed to the student's mother on April 4, 2024. A hard copy of the notice was also sent home with the student on that same date. The meeting

was held on April 15, 2024 - 54 school days from the date the student's mother provided written consent for the district to conduct the reevaluation.

Summary and Conclusions

The district completed a reevaluation of the student within the required 60 school day timeline following receipt of parental consent. That reevaluation addressed all areas identified by the parent in her November 2023 request. A violation of special education statutes and regulations *is not substantiated* on this aspect of this issue.

However, the district did not request parental consent within a "reasonable" time defined by the KSDE (15 school days from the date of the parent's request for a reevaluation). A violation of special education statutes and regulations *is identified* on this aspect of this issue.

Issue Three

The district has denied the student a free appropriate public education (FAPE) because the service minutes specified in his IEP were not provided.

Complainant's Position

According to the complainant, the student's IEP requires that he receive special education services in math, science, and social studies. However, when the paraprofessional who supports the student in these classes was unavailable, the student was not provided with the required service.

The complainant also asserts that unless the student requests support on classroom assignments when the paraprofessional is available in the classroom, he does not receive any special education services. As a result, the student has not been consistently completing class assignments. It is the position of the parent that when the student brings home an assignment with no work completed, no support has been given to the student during his independent work time.

District's Position

While the district stipulates that paraeducator support was unavailable to the student over a three day period due to staff illness, it is the position of the district that there is no evidence to support the contention that this break in service denied the student a FAPE.

Applicable Statutes and Regulations

As noted above under Issue One, federal regulations, at 34 C.F.R. 300.101, require states to ensure that a free appropriate public education (FAPE) is made available to all children with disabilities residing within the state. Accordingly, Kansas regulations at K.A.R. 91-40-2(b)(1) require that each school district makes FAPE available to each child with a disability residing in its jurisdiction. Federal regulations, at 34 C.F.R. 300.17, define FAPE, in part, as special

education and related services provided in conformity with an Individualized Education Program (IEP).

Investigative Findings Regarding Paraeducator Absences

The student's February 2023 IEP stated that the student was to receive special education staff support every day in the general education classroom "for a portion of the day as his same/aged peers for ELA and math." When the student's IEP was revised on November 27, 2023, the IEP team clarified and expanded the "IEP Anticipated Services" section to show that the student would receive 35 minutes of special education services in the general education classroom every school day during each of four classes - reading (ELA), math, social studies, and science. The parent provided written consent for the implementation of these services on January 9, 2024.

In a telephone conference call with the investigator and the complainant on April 11, 2024, the parent stated that it was her understanding that this support would be provided by a paraeducator who would help the student understand class assignments and focus on those assignments during independent study time.

According to the district, a number of staff members were absent due to illness in early February 2024. The district has two staff members assigned to provide coverage for an absent paraeducator. However, on February 7, 8, and 9, 2024, neither of those individuals was available to provide coverage during the student's Science class. Paraeducator support was available during the student's ELA, math, and social studies classes.

The student's Science teacher does not assign homework every day. No assignments were given on February 7 or 9, 2024. A quiz was given on February 8, 2024, and the student scored 5.75 out of 6 which earned him an A grade.

Summary and Conclusions Regarding Paraeducator Absences

The district's plan for the provision of coverage for paraeducator absences effectively addressed the illness of a paraeducator in three of the student's general education classes over a period of three days during February 2024. However, the district acknowledges that coverage was not provided to the student for the required 35 minutes of special education service in his science classroom over that same three day period as required by the student's November 27, 2023 IEP. A violation of special education statutes and regulations is substantiated on this issue.

However, support from a paraeducator is intended to enable the student to understand and focus on class assignments during independent study time in the classes. On the three days when paraeducator support was not provided to the student during science, no assignments were given to the class. No evidence was presented to show that the absence of the

paraeducator resulted in any harm to the student. Under these circumstances, no corrective actions are warranted.

Investigative Findings and Conclusions Regarding Alleged Failure to Provide Support to the Student Unless Requested

Neither the complainant nor the parent provided any specific examples in support of this allegation. Absent any direct evidence, the investigator was unable to establish whether any violation of special education statutes or regulations had occurred.

Issue Four

The district failed to write an IEP that was reasonably calculated to challenge the student to make progress.

Complainant's Position

The complainant contends two of the annual goals included in the student's February 2023 IEP were met by the end of the first monitoring period, but these goals were not revised or replaced by more challenging goals.

Additionally, the complainant contends that the district failed to properly address the student's identified needs in the areas of reading fluency and math calculation because the student's February 2023 IEP did not include goals related to these deficits.

Applicable Statutes and Regulations Regarding the Development of Challenging Annual Goals

A student's IEP should aim to enable the student to make progress toward the student's annual IEP goals and in the general education curriculum. The IEP must be reasonably calculated to enable the child to make "progress appropriate in light of the child's circumstances" (Endrew F. v. Douglas County School District (137 S. Ct. at 999)).

The Endrew decision recognizes that teams should have high expectations for the progress of a student and should craft challenging and ambitious IEP goals. However, goals should not be so ambitious that there is little chance that a student will actually achieve them. The team must draw on current data and their collective expertise to create a goal that strikes a balance between being ambitious and challenging and being realistic.

Once the IEP team has developed measurable annual goals for a child, the team must include a description of how the child's progress toward meeting the annual goals will be measured. This measure of progress will enable parents, children, and educators to monitor progress during the year, and, if appropriate, to revise the IEP to be consistent with the child's instructional needs. The idea is to use progress monitoring information in a formative way, to help with decision-making about instructional changes that may be needed.

The individualized education program (IEP) is to be reviewed at least once every 12 months, to determine whether the annual goals for the child are being achieved and to revise the IEP as appropriate. The IEP must include a description of when parents will be provided periodic reports about their child's progress toward meeting the annual goals. An example might be through the use of quarterly or other periodic reports concurrent with the issuance of district report cards (K.S.A. 72-3429(c)(3); 34 C.F.R. 300.320(a)(3)). The reporting may be carried out in writing or through a meeting with the parents (including documentation of information shared at the meeting). Whatever the method chosen, progress toward the goals must be monitored in the method indicated on the IEP and progress reports should include a description of the child's progress towards the child's measurable annual goals.

Special education statutes and regulations do not contain any requirement for the revision of an annual goal if the goal is met before the next annual review.

Investigative Findings Regarding the Development of Challenging Annual Goals

Under the section of the student's February 6, 2023 IEP entitled "Academic Achievement," two areas of need were identified by the IEP team: passage comprehension and off-task behavior. An annual goal was developed for each of these identified areas of need. A properly constituted IEP team - which included the parent - established target performance levels for the student for each of these goals based upon available baseline data.

Passage Comprehension

The student's February 6, 2023 IEP contained the following goal related to passage comprehension:

"By the end of the IEP, when presented with how, why, and what-if questions after reading a story silently, [the student will answer comprehension questions with 80% accuracy four of five trials.]"

According to the "Baseline" for the reading goal, the student was - at the time the goal was written - able to read a passage and answer 7 out of 10 questions for 70% accuracy.

According to the student's February 2023 IEP, the parent would receive "progress reports at the same time intervals and in the same manner as general education. For this student this will be through written report and/or parent conference." Grade reports are provided to parents quarterly in this district.

Reports on the student's progress toward attainment of his annual goals was provided through written reports which were either mailed or hand-delivered to the parent. The goal was first monitored on March 10, 2023. At that time, the student was demonstrating an accuracy level of 85%. However, only one month had passed since the goal was developed. The

goal was monitored again on May 4, 2023. At that time, the student was demonstrating 80% accuracy on this task.

According to the special education teacher, she did not revise the goal because the student had shown a pattern of lower performance on goals for the first semester of previous school years. The teacher stated that she wanted to see how the student performed on this goal at the beginning of the 2023-24 school year before considering any change to the target performance level.

This goal was monitored again on October 13, 2023. At that time, the student was demonstrating 92% accuracy for this task. A new comprehension goal was developed for the student when the IEP team met on November 27, 2023, well ahead of the 12-month period covered by the student's February 6, 2023 IEP.

There is no evidence to suggest that the student's reading comprehension instruction was in any way limited during the period of February 6 through November 27, 2023 by the target established in this annual goal.

Behavior

The student's February 6, 2023 IEP included the following goal related to behavior:

"By the end of the IEP, [the student] will display on task behavior in class in and out of the general education classroom for 80% of the school day."

The baseline for this goal stated that the student had "moments of struggle on task completion. He will take an extended amount of time on an assignment. He often has to be redirected to get back on task. He is currently doing this 70% of the day."

Progress toward attainment of this goal was first reported to the parent in the manner previously described on March 10, 2023. At that time, the student was demonstrating on-task behavior 89% of the school day. By May 4, 2023, he was on-task 78% of the school day. When this goal was monitored on October 13, 2023, the student was on-task 72% of the time.

Summary and Conclusions Regarding the Development of Challenging Annual Goals

Two annual goals were developed by a properly constituted IEP team at a meeting on February 6, 2023. The student's progress toward attainment of these goals was monitored and reported to the parent quarterly - on the same schedule and in the same manner that class grades for all students are reported to parents in this district.

No evidence was presented to suggest that the student's instruction was limited in any way by the established criteria for success in attaining the goal. While the student exceeded the target level for reading comprehension during three monitoring periods, statutes and regulations do

not mandate a change to an annual goal under such circumstances. A violation of special education statutes and regulations is not substantiated on this issue.

Applicable Statutes and Regulations Regarding Development of Annual Goals for Math Computation and Reading Fluency

A formal complaint must allege a violation that occurred not more than one year before the date the complaint is received and filed with the commissioner of education (K.A.R. 91-40-51(b)). This issue relates to the development of an IEP for this student on February 6, 2023 - more than 12 months prior to the date this complaint was received on March 27, 2024. While implementation of that IEP has been investigated because that implementation fell within the designated window, IEP team decisions made outside that window regarding what was to be included in the document were not.

Issue Five

The district failed to collect data and accurately report the student's lack of progress on goals and failed to properly address the student's lack of progress.

Complainant's Position

According to the complainant, progress reports indicated that the student was making progress on his behavior goal even though his skills were actually regressing.

Applicable Statutes and Regulations

As noted above under Issue Four, a student's IEP is to be reviewed at least once every 12 months, to determine whether the annual goals for the child are being achieved and to revise the IEP as appropriate. The review and revision of the IEP is intended to address any lack of expected progress toward the annual goals and in the general education curriculum, where appropriate. Progress monitoring information can assist a student's IEP team with decision-making about instructional changes that may be needed.

If the student is not making progress or the progress is not sufficient to meet the annual IEP goals and make appropriate progress in the general education curriculum, the IEP team should meet to discuss the lack of progress and consider meeting more frequently than once a year.

Investigative Findings

The student's February 6, 2023 IEP included the following goal related to behavior:

"By the end of the IEP, [the student] will display on task behavior in class in and out of the general education classroom for 80% of the school day."

The baseline for this goal stated that the student had "moments of struggle on task completion. He will take an extended amount of time on an assignment. He often has to be redirected to get back on task. He is currently doing this 70% of the day."

The student's progress toward attainment of this goal was reported to the parent through quarterly progress reports. Progress was first reported on March 10, 2023. At that time, the student was demonstrating on-task behavior 89% of the school day. Data had only been collected for one month at the time progress was reported.

By May 4, 2023, he was on-task 78% of the school day - below the level reported at the time of the March monitoring but above baseline levels. When this goal was monitored on October 13, 2023, the student was on-task 72% of the time. While this was below the two previously reported on-task levels, the student was still performing above baseline levels. According to the special education teacher, the student was settling into a new classroom, and she anticipated the student's on-task behavior would improve by the next quarterly monitoring period.

Although the student's IEP was revised at the end of November 2023 - before the next monitoring and reporting date - data had been taken on this goal during the period of November 7 through November 20, 2023. That data showed the student to be on-task 83% of the time, above the previously established annual goal target level of 80%.

Summary and Conclusions

The student's progress toward attainment of his behavior goal was reported to the parent quarterly. While the student demonstrated greater than expected growth during the first month after the goal was established, his on-task performance fell nearer to baseline levels over the next two monitoring periods only to increase again during the second quarter of the 2023-24 school year. While lower than the student's performance when monitored one month after the goal was developed, his progress during the second and third monitoring periods remained above baseline levels. Data taken during the fourth quarter of monitoring showed the student to be on track to attain his annual goal. 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 substantiated noncompliance with special education statutes and regulations on an issue related to this complaint. Additional noncompliance was identified during the course of this investigation.

Specifically, a violation was substantiated with regard to 34 C.F.R. 300.101 and 34 C.F.R. 300.17 which requires the provision of a FAPE through conformity with a student's IEP. In this case, the district failed to provide the student with 35 minutes of special education services for each of three days when a paraeducator was unavailable in one of the student's classes due to illness. However, as noted above under Issue Two, the district has a plan in place to cover paraeducator absences, and there was no evidence to show that the student was harmed by this limited interruption in service. Therefore, no corrective actions are ordered with regard to this violation.

However, this investigation uncovered a violation of the "reasonable time" requirement established by KSDE when responding to a parent's request for an evaluation or reevaluation.

Therefore, USD #255 and the SCKSEC are directed to take the following actions:

1. Submit to Special Education and Title Services (SETS) by no later than May 29, 2024, a written statement of assurance stating that it will comply with the "reasonable time" standard of 15 school days for responding to a parent's request for evaluation or reevaluation by presenting the parent with prior written notice requesting consent for the evaluation or reevaluation OR prior written notice denying the parent's request.
2. By no later than May 29, 2024, submit to SETS a plan for the training of special education staff regarding this requirement.

Further, USD #255 and the SCKSEC 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)