

KANSAS STATE DEPARTMENT OF EDUCATION
SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT
FILED AGAINST
UNIFIED SCHOOL DISTRICT #475
ON SEPTEMBER 26, 2023

DATE OF REPORT OCTOBER 25, 2023

This report is in response to a complaint filed with our office by USD 475 Parent, -----, on behalf of her daughter, -----, a student receiving special education services in the early childhood program. For the remainder of this report, ----- will be referred to as "the student." ----- will be referred to as "the parent," "the complainant," or "the teacher."

Investigation of Complaint

Doug Tressler, Complaint Investigator, spoke by telephone with the complainant on Oct 4, 2023.

On Oct 4, 2023, the investigator spoke via video-conference with Dr. Nelson

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

1. The district's response to the allegations,
2. Copies of all IEPs, IEP amendments, Prior Written Notices in effect during August 1, 2023 – current
3. Copy of the initial evaluation or most recent re-evaluation whichever is most current,
4. Copies of the most recent Functional Behavioral Analysis,
5. Copies of any Behavior Intervention Plan,
6. Copies of any additional documentation you would like to have considered during the investigation
 - a. Release of information signed by the parent 9/27/2023.

Background Information

The student is preschool age and identified as developmentally delayed requiring speech language services only.

Issue One

The USD #475, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to properly assess the student as required under K.A.R 91-40-9(B) and 34 C.F.R. 300.304(c).

Applicable Statutes and Regulations

Federal regulations, at 34 C.F.R. 300.304(b)(1) requires that an agency “use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, including information provided by the parent.” Additionally, an agency is not to “use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability and for determining an appropriate educational program.” (34 C.F.R. 300.304(b)(2)).

Complainant’s Position

In her complaint, the parent alleges the following:

The district demanded a diagnosis to provide services for the student.

District’s Position

The district denies requiring a diagnosis from a physician as a requirement for any services connected to the student’s Individual Educational Plan.

The district documented in its response that while the mother did provide medical records on 9/8/2023, this communication of records occurred well after the student’s evaluation and eligibility determination which had been completed in May of 2021. That communication occurred in relation to an SSA report the parent was attempting to file.

Investigative Findings

During the investigation of the documents submitted, there was no error noted in the evaluation process. Documents show that the district used a variety of assessments and did not require a specific diagnosis or rely solely on one assessment during the evaluation. Furthermore, there is no indication that the district requested a medical diagnosis in order to proceed with the evaluation.

During the interview both the parent and the school stated that the school did not make a requirement of a medical diagnosis for any part of the IEP. This includes the evaluation process and the development of the individual educational plan including special education and related services.

However, documents provided by the district confirm that the parent had submitted paperwork from the Social Security Administration (SSA) to the school in the process of filling out this SSA application. During this process the school nurse did ask about a diagnosis.

However, the SSA process is not a part of the Individuals with Disabilities Education Act and is outside the scope of this investigation.

In conclusion, based on the information above, USD #475 *did not* violate state or federal special education laws by requesting a formal diagnosis before or during the evaluation process.

Issue Two

The USD #475, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to comply with 34 C.F.R. 300.613 and K.S.A 72-6310(c) by failing to provide the parent with behavioral reports, a physician behavioral reports, and a DCF report filed by the district.

Applicable Statutes and Regulations

Federal regulations, at 34 C.F.R. 300.613 state “each participating agency must permit parents to inspect and review any education records relating to their children that are collected, maintained, or used by the agency under this part”. Additionally, “the agency must comply with a request without unnecessary delay and before any meeting regarding an IEP, or any hearing pursuant to § 300.507 or §§ 300.530 through 300.532, or resolution session pursuant to § 300.510, and in no case more than 45 days after the request has been made”

The right to inspect and review education records under this section includes—

- (1) The right to a response from the participating agency to reasonable requests for explanations and interpretations of the records;
- (2) The right to request that the agency provide copies of the records containing the information if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records; and
- (3) The right to have a representative of the parent inspect and review the records.” (34 C.F.R. 300.613(b)(1)-(3)).

Furthermore, K.S.A 72-6310(c) states, “school records of each pupil are the property of the pupil and shall not be withheld by any school district. Upon request of a pupil or the parent of a pupil, the school records of the pupil shall be given to such pupil or parent, or, upon transfer of the pupil to another school district or to a nonpublic school, shall be forwarded to such school district or nonpublic school.”

Complainant’s Position

In the complaint, the parent alleges that behavioral records and a DCF report were not provided to the parent upon request. The parent also alleges that the district failed to provide behavioral reports to the student’s physician upon request.

District's Position

The district stated that they did provide provided all educational records, required under federal and state law, to the parent upon request. The district also states that they provided the student's physician the student's educational records upon request and receipt of consent to release the records from the parents. The district states that the request for records to be sent to the student's physician was completed within seven school days following receipt of a signed release of information notice from the parent.

Investigative Findings

During the investigation, there was no error noted in the provision of records.

Requested Behavioral Records to the parent:

During separate testimonies given to the investigator both the school and the parent substantiated that all records requested by the parent were provided to the parent within a reasonable time. As such, it is found that the district did not violate state or federal laws by failing to provide the parent with the student's educational records upon request or within a reasonable amount of time.

Requested Behavioral Records to the physician:

Documents show that the parent did request on September 20, 2023, for records to be shared with the student's physician and that the district responded that they would do so as soon as the parent signed the release. Documents also indicate that the district shared the records with the parent following this request on September 27, 2023.

The required release of information was signed and dated by the parent on 9/27/2023. Following this consent, the school records show that the requested records were then released to the physician within seven school days. The provision of student records to a representative of the parent within seven days falls within the required 45-day time period and is a reasonable amount of time. As such, it is found that the district did not violate state or federal laws by failing to provide the parent's representative with the student's educational records upon request, consent for release, or within a reasonable amount of time.

Requested DCF Report to the parent:

In the initial complaint, the parent lists a report that the district sent to DCF as part of the educational records the school allegedly failed to provide to the parent. During interviews, both the school and the parent referred to the parent's request concerning a Department of Children and Families (DCF) report submitted by the school.

The school references this request in their written response documentation and dates the parents request as 9/19/23. Under 34 C.F.R. 300.613(a), an educational record includes "any education records relating to their children that are collected, maintained, or used by the

agency under this part." As such, the district is only obligated to provide the parent with records that fall under this definition, and are collected, maintained, or used by the agency in relation to the student's special education. A report to DCF does not qualify as an educational record as it is not collected, maintained, or used by the school in relation to the student's special education. Therefore, the district *did not* violate state or federal laws by failing to provide the parent with a copy of a DCF report submitted to DCF by the school.

Summary and Conclusions

ISSUE ONE: The USD #475, did not violate state or federal regulations implementing the Individuals with Disabilities Education Act (IDEA), by failing to properly assess the student as required under K.A.R 91-40-9(B) and 34 C.F.R. 300.304(c). No corrective action required.

ISSUE TWO: The USD #475, did not violate state or federal regulations implementing the Individuals with Disabilities Education Act (IDEA), specifically, 34 C.F.R. 300.613 and K.S.A 72-6310(c), by failing to provide the parent or the student's physician with behavioral reports. Additionally, the district did not violate state or federal regulations implementing the Individuals with Disabilities Education Act (IDEA), specifically, 34 C.F.R. 300.613 and K.S.A 72-6310(c), by failing to provide the parent with a DCF report filed by the district. No corrective action required.

Corrective Action

Based on the foregoing, according to IDEA and Kansas special education regulations a violation is not substantiated, and no corrective action is required.

Investigator

Doug Tressler
BS Elem Ed, MS Sp Ed, MS Ed Admin
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)