

**KANSAS STATE DEPARTMENT OF EDUCATION
SPECIAL EDUCATION AND TITLE SERVICES**

**REPORT OF COMPLAINT
FILED AGAINST
UNIFIED SCHOOL DISTRICT #336
ON OCTOBER 6, 2023**

DATE OF REPORT NOVEMBER 13, 2023

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

The complaint is against USD #336 (Holton Public Schools). In the remainder of the report, this public agency may also be referred to as "the district", "the local education agency (LEA)", or "the school".

The Kansas State Department of Education (KSDE) allows for a 30-day timeline to investigate a complaint from the date in which it was filed. A complaint is considered filed on the date in which it was received by KSDE. In this case, the KSDE initially received the complaint on October 6, 2023 and the 30-day timeline ended on November 5, 2023; however, KSDE granted an extension until November 13, 2023 to allow for the parent to provide additional information.

Evidence Reviewed

During the investigation, the Complaint Investigator, Nancy Thomas, reviewed all evidence and documentation, which was provided by both the district and the complainant. It is noted that the parent provided additional documentation that was reviewed but did not directly pertain to the issue being investigated. The following documentation and information were used in consideration of the issue:

1. Individualized Education Program (IEP) dated October 28, 2022 and amended on January 27, 2023
2. Procedures for the English class including class rules, late assignments, absences and grades
3. English Class Score Detail for the student dated between August 18, 2023 and October 31, 2023
4. Timeline created by USD #336 staff dated between August 24, 2023 and September 29, 2023
5. Email exchange between Corrin Tanking, English Teacher, and the complainant dated August 28, 2023 at 12:43 and 12:47 PM

6. August 28, 2023 Assignment Details
7. Student Not in Good Standing (SNIG) letters to the parent dated September 5, 12, 19, and 26, 2023
8. Parents written concerns for mediation which was held on September 8, 2023
9. Formal Complaint Request Form signed by the complainant on October 6, 2023
10. Response to the Allegations dated October 24, 2023 written by Amy Haussler, Director of Special Education
11. Interview with Michael Kimberlin, Building Principal; Addie Larson, School Psychologist; Eunice Klahr, Special Education Teacher; Bob Davies, Superintendent; and Ms. Haussler, on October 26, 2023
12. Interview with the complainant on October 27, 2023 and November 8, 2023
13. English 8 Procedures for Class written by Ms. Tanking
14. Holton Middle School Handbook Attendance Policy

Background Information

The student is currently enrolled in the eighth grade in USD #336 and attends Holton Middle School. The student was most recently reevaluated on October 26, 2021 and was found eligible for special education and services under the exceptionality category of Autism. Relevant medical information includes diagnoses of Attention Deficit Hyperactivity Disorder (ADHD), Oppositional Defiant Disorder (ODD), and Generalized Anxiety Disorder (GAD).

The student began receiving early childhood special education services at age three in USD #336 and continued his educational career in USD #336 until he was homeschooled in fourth grade. In fifth grade, he participated in virtual instruction in USD #336. He enrolled at Holton Middle School at the beginning of sixth grade and has received special education and related services in that school building through the present time.

Issues Investigated

Based on the written complaint, only one issue was identified and investigated.

Issue One

USD #336, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to ensure the student had an equal opportunity to participate in program options, nonacademic and/or extracurricular activities and services offered by the district during the 2023-24 school year, specifically the "Not Quite Homecoming Dance" on September 29, 2023.

Applicable Law

Federal regulations at 34 C.F.R. 300.107 requires school districts to provide nonacademic and extracurricular services and activities in the manner necessary to afford children with disabilities and equal opportunity for participation in those services and activities, including the provision of supplementary aides and services determined appropriate and necessary by the student's IEP team.

Analysis: Findings of Fact

The parent reported that USD #336 failed to provide the student with an equal opportunity to participate in the "Not Quite Homecoming Dance" on September 29, 2023. The parent stated,

The student's disability hinders his ability to stay in the classroom when he becomes dysregulated or is unable to cope with the social and educational demands. When this occurs, the student leaves the classroom and goes to a 'calm down area'. On 8/28/23, this occurred in English class. The teacher recorded a zero in PowerSchool [the computerized grading system for the district] for the assignment, which resulted in him having an "F" in the class and being placed on the SNIG [Student Not in Good Standing] List . . . It is like he is being punished twice for something caused by his disability. First, he doesn't receive the direct instruction from the teacher while he is in the "calm down area", but is still required to complete the assignment. Keep in mind, going to the calm down area is a coping strategy outlined in his IEP. Secondly, the zeros for those assignments cause Fs and that prevents him from participating in activities with his peers . . .

The parent reported that because the student was on the SNIG List, he was not allowed to attend the "Not Quite Homecoming Dance" on Friday, September 29, 2023. The parent indicated that the student did not cope well with not being able to go to the dance because it was an event that he had been planning to attend and was very excited about. The parent stated that she decided to keep him home from school on that Friday, the day of the dance, because he was so dysregulated.

USD #336 reported the student's IEP does allow him to leave the classroom when dysregulated for use of the calm down area for up to 5 minutes; however, the district believes the IEP does not excuse the student from completing work or the teacher having to accept incomplete or substandard work. The student was given multiple opportunities to complete his work and bring his grade up just as all students who are on the SNIG list. The student failed to follow the appropriate procedures to address the grade of zero in the English class and be removed from the SNIG list prior to the dance.

The English class Late Assignment procedure states that up to 75% credit can be earned on assignments which are one day late. After two to five days, the assignment can only be worth 60% credit and, all assignments more than one week old must still be completed but can only

be worth 50% of possible points. It is noted that grades are cumulative as the quarter progresses.

The IEP in effect between the first day of the 2023-24 school year and September 29, 2023 is dated October 28, 2022 and was amended on January 27, 2023. This IEP requires 30 minutes per week of specialized instruction in social skills in the special education setting and 45 minutes per day of special education support in the general education setting for his core classes. The IEP also includes accommodations regarding behavior management (breaks, use of break cards, use of calming strategies, etc.) and reducing the amount of work on classroom assignments. However, the IEP does not include any accommodation for extended time to complete assignments.

The parent reported that on August 24, 2023, the student refused to stop working on an assignment from another class as directed by the English teacher. The student reported to his mother that the teacher grabbed his papers causing something like a tug of war until the student let go. This caused him to become dysregulated and he ran out of the classroom. He was given a zero for that day's assignment which caused him to be placed on SNIG list and ultimately be ineligible to attend the dance on September 29, 2023.

USD #336 reported the student was in class for instruction on August 24, 2023 and did not miss to go to the calm down area. The English teacher had modified an assignment to reduce it from the original 10 items to four items. However, when the assignment was given, and the student refused to do it.

On August 28, 2023 the parent and Corrin Tanking, English Teacher, emailed regarding making up the August 24, 2023 assignment. Ms. Tanking stated, ". . . If he turns in the 4 to me today I will give him up to 75% on the assignment . . ."

The August 28, 2023 English class Assignment Detail in PowerSchool stated, "*I only needed 4 discussion topics written down from him. The rest of the class needed 10. He stormed out and left the paper I gave him to write on and never came back.*" The grade record shows the student received a zero on that assignment.

Documentation showed the parent was notified the student was on the SNIG List for four consecutive weeks prior to the dance on September 5, 12, 19, and 26, 2023. The SNIG List letter states,

You are receiving this email because your student is currently failing one or more classes and is on the SNIG List (Student Not in Good Standing). Please take a look at your student's grades or have your student log into PowerSchool to show you their grades. Until removed from the SNIG List, your student is ineligible for sports competition (but should still be attending practice) and extracurricular activities. We at HMS [Holton Middle School] want to give all students the opportunity to attend after-school activities, so we encourage your student to turn in missing work or to talk with the teacher about their failing grades. To

receive extra help, your student may also participate in after school tutoring during Powerhour which runs Mon - Thurs, 3:00-4:00. The SNIG list is run each Tuesday and your student will be on the list until the individual class grade is back above "passing" which is a 60% or D. To remove oneself from the SNIG List, students should follow the steps listed:

- 1. Resolve your failing grades (turn in missing work or complete assignments for a grade).*
- 2. Have the teacher sign a note for the office or email Mrs. Nott and Mr. Kimberlin stating that your failing grade has been resolved.*
- 3. Turn in this note or email to the office by the end of the school day. If a note or email is turned in after the end of the school day, it will need to be approved by the principal before you may participate in a school activity that evening.*

School staff reported that despite these notifications provided to the parent, the student did not take advantage of the opportunities offered to address the failing grade in English even though he followed the procedures for other classes during the month of September. The parent acknowledged that the student had successfully been removed from the SNIG List in other classes by following these procedures during September 2023.

On September 29, 2023, USD #336 indicated that student was passing all of his classes with the exception of the English class which was caused by a combination of missing assignments and low scores on assignments and tests. The PowerSchool scores for English class prior to the dance reflect a total of 11 grades. The student earned A's on two assignments, a B on one assignment; C's on two assignments; D's on two assignments; F's on three assignments, and zero points on one assignment. As of September 29, 2023, his score was 56% and failing in the English class.

The district also noted that the student generally missed the last 15-20 minutes of every English class due to the parent picking him up early from school. The school has repeatedly requested that the student stay the entire day for consistency in routine and expectations. This early departure results in lost opportunities to work on the assignments in class, as well as prevents the child from accessing the after school assistance offered during Power Hour.

School staff reported the student did not attend school on September 29, 2023 which was the last day he would have had an opportunity to increase his grade to passing in the English class. For this reason, even if the student had earned a passing grade in his English class, he would not have been eligible to participate in the dance because the student was absent from school on the day of the dance. The Holton Middle School Student Handbook includes a description of the attendance policy and the consequences. The policy states,

Attendance and Extracurricular Activities: Any student that is absent after 12 p.m. due to illness or for any "unexcused" reason shall NOT be eligible to attend and or participate in any extra-curricular activities scheduled during that particular day.

School staff noted that the student had an excused absence and were unaware that the student was not sent to school on September 29, 2023 because of dysregulation until this complaint was filed.

Conclusion

Federal regulations at 34 C.F.R. 300.107 requires school districts to provide nonacademic and extracurricular services and activities in the manner necessary to afford children with disabilities and equal opportunity for participation in those services and activities, including the provision of supplementary aides and services determined appropriate and necessary by the student's IEP team.

In this case, the student was not eligible to attend the "Not Quite Homecoming Dance" on September 29, 2023 for two reasons. First, he was earning a failing grade in his English class even though the original August 24, 2023 assignment resulting in the zero grade was shortened as required by the IEP. There was no accommodation allowing extended time for him to complete and turn in assignments so he was given until the next class period on August 28, 2023 to turn in the assignment for up to 75% of the grade. The student could have turned the completed assignment in up to one week later to earn up to 50% of the grade following the English class late assignment procedures. The student could have followed the SNIG List procedures between September 5 and September 29, 2023 to be removed from the SNIG List because of his English grade. However, on the date of the dance, the student was ineligible to participate because of his English grade just as any other student in the same circumstances.

It is noted that the student was also ineligible to participate in the dance because of the attendance policy which requires the student to have been in attendance at school after 12 p.m. on the day of any extracurricular activity. While the parent chose to initially keep the student home on September 29, 2023 because of his dysregulation, he did not return to school in the afternoon and school staff reported they were unaware of the reason the student was kept home on that date until the complaint was filed.

Based on the foregoing, USD #336 *did not fail* to ensure the student had an equal opportunity to participate in program options, nonacademic and/or extracurricular activities and services offered by the district during the 2023-24 school year, specifically the "Not Quite Homecoming Dance on September 29, 2023.

Investigator

Nancy Thomas

Nancy Thomas, M.Ed., 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)