

KANSAS STATE DEPARTMENT OF EDUCATION
SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT
FILED AGAINST
UNIFIED SCHOOL DISTRICT #490
ON MARCH 5, 2024

DATE OF REPORT APRIL 12, 2024

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" or "the parent."

The complaint is against USD #490, El Dorado Public Schools. It is noted that Butler County Special Education Interlocal #638 provides special education services for USD#490. In the remainder of the report," the "district" shall refer only to USD #490.

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 March 5, 2024 and the 30-day timeline ends on April 5, 2024. A one-week extension was requested by the complaint investigator and granted by KSDE as the IEP team was meeting on April 2, 2024 to review the results of a reevaluation and to develop a new IEP. The new timeline ends on April 12, 2024.

Evidence Reviewed

During the investigation, the Complaint Investigator, Dr. Donna Wickham reviewed all evidence and documentation, which was provided by both the district and the complainant. Additionally, Dr. Wickham interviewed and spoke with the mother on March 18, 2024 and April 3, 2024. The complaint investigator interviewed the student's LifeWorks case manager on March April 8, 2024. The following documentation and information were used in consideration of the issues:

1. Student Safety Plan dated October 9, 2023 (from sending district)
2. Individualized Education Program (IEP), dated October 16, 2023 (from sending district)
3. Individualized Education Program, dated November 20, 2023
4. Individualized Education Program, dated January 29, 2024
5. Prior Written Notice for Identification, Special Education and Related Services, Educational Placement, Change in Services, Change in Placement, and/or Request for Consent (PWN) dated January 29, 2024
6. Email from student's case manager to assistant principal, dated February 13, 2024 at 2:58 p.m.

7. District Response to the allegations, received April 1, 2024
8. Email from the Coop Director to the complaint investigator dated April 2, 2024 at 1:55 p.m.
9. Interview with student's case manager on April 8, 2024
10. Progress Report for 2023-2024 School year
11. 2023-2024 District Calendar

Background Information

The student is a junior at the high school in the district. The student moved into the district in October 2023 with an IEP that was adopted and implemented in November 2023. The student qualified for special education as a student with Autism. The student had a safety plan upon moving into the district for eloping and it is reported that eloping has become more frequent in the new school district. The IEP met in January 2024, and it was determined to conduct a reevaluation to better address the eloping. The reevaluation was expedited, and the IEP team met on April 2, 2024.

Issues Investigated

1. **ISSUE ONE:** USD #490, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to follow the student's IEP during the 2023-2024 school year, specifically the behavior intervention plan components of providing one-on-one staff, a safe place to calm resulting in unwarranted suspensions.
2. **ISSUE TWO:** USD #490, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to craft an IEP based on the student's evaluation, strengths and needs related to behavior during the 2023-2024 school year.

Issue One

USD #490, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to follow the student's IEP during the 2023-2024 school year, specifically the behavior intervention plan components of providing one-on-one staff, a safe place to calm resulting in unwarranted suspensions.

Applicable Law

Federal regulations at 34 C.F.R. §300.323(c)(2) require school districts to ensure that as soon as possible following the development of the IEP, special education and related services are made available to the child in accordance with the child's IEP. K.A.R. §91-40-16(b)(2) further specifies those services for which written consent has been granted as specified by law are

implemented not later than 10 school days after parental consent is granted unless reasonable justification for a delay can be shown.

Analysis: Findings of Fact

The parent alleged that after moving to the district after Thanksgiving in 2023 the district did not follow the IEP. She stated he had a very specific BIP that worked for him at the previous school and that the district did not follow any part of it including, providing one-on-one staff throughout the school day, including during class, lunch, passing periods, and the transition to and from the bus. Additionally, the previous IEP stated he could go to a safe place to help calm down. She alleged that when he went to a separate location it was to work, not to calm down. As a result of the staff pushing him, instead of supporting him he began to elope more frequently. Subsequently the student was suspended for eloping and when he tried to return once he had calmed down, he was not allowed.

The district responded that the IEP from the previous district did not indicate the need for the same one-on-one staff all day. It did show special education services and that the district provided staff with the student at all times, but not the same para all day long each day. Additionally, this student has several places in the building and outside of the building in the courtyard that were designated as a "safe place." The student did not always utilize the spaces, but they were always available to him.

Three IEPs were in effect during the 2023-2024 school year to date. The IEP dated October 16, 2023 from the sending district and in effect when the student moved in. The student also moved into the district with a Safety Plan dated October 9, 2023. The November 20, 2023 IEP adopted the October 16, 2023 goals, supplementary aids and supports and services. Finally, the third IEP was written January 29, 2024. The move-in IEP and adopted November 20, 2023 IEP documented 110 minutes of special education service 5 days every week with para support in the general education setting for electives. No accommodations addressed para support; however, the IEP refers to para support during electives.

The case manager reported in an email to the complaint investigator on April 2, 2024 at 1:55 p.m. that three paraeducators and the teacher rotated to provide the student support during electives.

The Safety Plan dated October 9, 2023 documents a safe space be available to the student when the case manager is absent. The October 16, 2023 and November 20, 2023 IEPs have an accommodation that when the student is "overwhelmed, frustrated, or dysregulated due to changes or sensory issues a short break (typically in a safe place) is provided to the student to calm down and prepare to join in the class by using a timer for 5-10 minute breaks. As part of the behavior intervention plan in the November 20, 2023 IEP the following is listed as a replacement strategy, "when [student] is overwhelmed, frustrated, or dysregulated a short break (typically in a safe place) helps [student] calm down and prepare to join in the class" as

well, "Staff will prompt [student] to use a calming strategy. [Student] will choose a calming strategy. Replacement behavior examples, but are not limited to: feeling a fluffy item, listening to music, and having alone time in his safe zone."

The IEP dated January 29, 2024 documents that the student will receive 110 minutes of special education service 5 days every week with para support in the general education setting for electives. The January 29, 2024 IEP added an accommodation that stated, "para support in all settings for the duration of the school day, in all settings during school" And "may receive 1 on 1 adult instruction in a separate setting when needed in the general education setting". This is documented in the January 29, 2024 PWN as well.

The case manager reported in an email to the complaint investigator on April 2, 2024 at 1:55 p.m. that, "He doesn't utilize his safe spaces, even when they are offered to him."

Conclusion

It is found that the student's IEPs indicated the student would be provided one-to-one support during electives. Interview with the district showed that the student was provided with one-to-one support by three paraeducators or the teacher. Further, it was written in the IEPs, Safety Plan and/or Behavior Intervention Plan that a safe space was to be provided when the student's behavior was dysregulated, overwhelmed, or frustrated. Interview with the district showed that a location was identified and that it was provided to the student, but he did not choose the safe space. As a safe space was one of the student's options for calming it was found that the student had a choice of calming strategies beyond the safe space. Based on the foregoing, *it is not substantiated* that USD #490 failed to follow the student's IEP during the 2023-2024 school year, specifically the behavior intervention plan components of providing one-on-one staff, a safe place to calm resulting in unwarranted suspensions.

Issue Two

USD #490, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to craft an IEP based on the student's evaluation, strengths and needs related to behavior during the 2023-2024 school year.

Applicable Law

Federal regulations and state statutes at 34 C.F.R. §300.324(a)(1), C.F.R. §34 300.324(a)(2)(i) and K.S.A. §72-3429(9)(d) state that when developing each child's IEP, the IEP team shall consider the strengths of the child and the concerns of the parents for enhancing the education of their child; the results of the initial evaluation or most recent evaluation of the child; the academic, developmental and functional needs of the child; and in the case of a child whose behavior impedes the child's learning or that of others, the use of positive behavioral interventions and supports and other strategies to address that behavior.

Analysis: Findings of Fact

The parent alleged that on January 29, 2024 a meeting was held and changes were made that she did not approve. The parent stated her goal of this meeting was to problem solve the student's eloping. She stated that when she learned the meeting was an IEP meeting, she was told the only changes to the IEP would be to correct the school's name to the current district's name. The parent stated that when she received the IEP many other parts were changed as well. The parent stated that these changes have negatively impacted the student's behavior and now the principal is pushing to move the student to either half days or a more restrictive environment.

The district responded that they met on January 29, 2024 to discuss the student's needs and drafted an IEP with parent input. During the meeting, the team did indicate the need for more information and requested consent for a comprehensive evaluation including a FBA. Consent was provided and this comprehensive reevaluation was expedited, and testing began immediately. The reevaluation was in process at the time of the child complaint was made so the team was already in the process of gathering more data for the April 2, 2024 reevaluation meeting and possible revision of the IEP.

Interview and documentation showed that the student was in another district until October 2023 when he moved to this district. The IEP team adopted the move-in IEP on November 23, 2023.

The IEP dated November 23, 2023 was adopted from the previous district. It is marked that the student's behavior impacts the learning of self or others and that need is met by a goal. The goal stated that when "upset, frustrated, angry or dysregulated he will use a self-regulation/self-coping strategy to help him stay in the school building 100% of the time as measured by his behavior on (sic) a sheet and teacher data collection." Additionally, the student receives 275 minutes of special education service in the special education setting 5 days every week and an additional 110 minutes of special education service in the general education setting during electives five days every week.

Interview and documentation show that an IEP meeting was held on January 29, 2024 to discuss eloping. The IEP shows that after less than 80 school days the school requested permission to conduct a reevaluation to complete new academic testing and a Functional Behavior Assessment (FBA).

The IEP meeting on January 29, 2024 was held in response to the student's eloping in spite of the goal on his November 23, 2023 IEP. Data indicated the student eloped from school sixteen times during 27 school days. In this IEP, the strategies that were described in the November 23, 2023 IEP behavior goal were written as a Behavior Intervention Plan and a second goal addressed behavior, "when consequences are given for unacceptable behavior, [student] will accept responsibility for own behavior without making excuses or blaming others and accept

consequences of a wrongdoing without excessive complaining 70% of the time.” The BIP included strategies for when the student eloped to include, “If [student] leaves classrooms, staff will notify office immediately. If [student] stays in building, staff will try to de-escalate and have him come back to class. If he leaves the building, [student] will be given a lunch detention. [Student] will also be given his work in an alternative setting within the school building for rest of the day with para support if he chooses to come back for classes. Accommodations to describe adult support were added, “receive 1 on 1 adult instruction in a separate setting” and “Para Support in all settings” for the duration of the school day.

An email from the case manager to the district summarized the discussions and decisions of the meeting. This email also suggested a need for a different approach to the student’s eloping behavior that would be more supportive of the student.

Conclusion

It is found that the district first adopted the IEP from the previous district within one month of the student moving in, November 20, 2023. The IEP team met in January to address the student’s eloping using data collected after a period of time. At that meeting changes to the IEP were made that were reasonable based on the data and the district requested and received consent to conduct a comprehensive reevaluation to determine if additional IEP revisions were warranted. The change in service minutes were related to the district’s school day rather than reflective of a change of service minutes.

An April 2, 2024 meeting was held for the district to present the findings of the reevaluation and consider revisions to the IEP. Interview with the family and district after the meeting suggest that changes have been made to the IEP. Based on the foregoing, *it is not substantiated* that USD #490 failed to craft an IEP based on the student’s evaluation, strengths and needs related to behavior during the 2023-2024 school year. It is noted that the evaluation results were not reviewed, nor any resultant changes to the student’s IEP.

Summary of Conclusions/Corrective Action

1. **ISSUE ONE:** A violation of 34 C.F.R. §300.323(c)(2) and K.A.R. §91-40-16(b)(2) was not found, based on interview and review of documentation. Corrective action is not required.
2. **ISSUE TWO:** A violation of 34 C.F.R. §300.324(a)(1), C.F.R. §34 300.324(a)(2)(i) and K.S.A. §72-3429(9)(d) was not found, based on interview and review of documentation. Corrective action is not required.

Right to Appeal

Either party may appeal the findings or conclusions in this report by filing a written notice of appeal with the State Commissioner of Education, ATTN: Special Education and Title Services, Landon State Office Building, 900 SW Jackson Street, Suite 620, Topeka, KS 66612-1212. The notice of appeal may also be filed by email to formalcomplaints@ksde.org The notice of appeal must be delivered within 10 calendar days from the date of this report.

For further description of the appeals process, see Kansas Administrative Regulations 91-40-51(f).

K.A.R. 91-40-51(f) Appeals.

(1) Any agency or complainant may appeal any of the findings or conclusions of a compliance report prepared by the special education section of the department by filing a written notice of appeal with the state commissioner of education. Each notice shall be filed within 10 days from the date of the report. Each notice shall provide a detailed statement of the basis for alleging that the report is incorrect.

Upon receiving an appeal, an appeal committee of at least three department of education members shall be appointed by the commissioner to review the report and to consider the information provided by the local education agency, the complainant, or others. The appeal process, including any hearing conducted by the appeal committee, shall be completed within 15 days from the date of receipt of the notice of appeal, and a decision shall be rendered within five days after the appeal process is completed unless the appeal committee determines that exceptional circumstances exist with respect to the particular complaint. In this event, the decision shall be rendered as soon as possible by the appeal committee.

(2) If an appeal committee affirms a compliance report that requires corrective action by an agency, that agency shall initiate the required corrective action immediately. If, after five days, no required corrective action has been initiated, the agency shall be notified of the action that will be taken to assure compliance as determined by the department. This action may include any of the following:

- (A) The issuance of an accreditation deficiency advisement;
- (B) the withholding of state or federal funds otherwise available to the agency;
- (C) the award of monetary reimbursement to the complainant; or
- (D) any combination of the actions specified in paragraph (f)(2)