

KANSAS STATE DEPARTMENT OF EDUCATION
SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT
FILED AGAINST
UNIFIED SCHOOL DISTRICT # 229
ON OCTOBER 6, 2023

DATE OF REPORT NOVEMBER 1, 2023

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

The complaint is against USD #229, Blue Valley Public Schools. In the remainder of the report, USD #229 will 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 investigation period ends with this report on November 1, 2023.

Evidence Reviewed

During the investigation, the Complaint Investigator, Gwen Beegle, reviewed all evidence and documentation, which was provided by both the district and the complainant. The following people were interviewed: Dr. Mark Schmidt (USD #229 Assistant Superintendent of Special Education) on October 27, 2023, the principal via email dated October 30, 2023, and the parent on two occasions, October 10, 2023 and October 29, 2023. The Complaint Investigator also spoke briefly on the phone and received emails from the district and the complainant between October 6, 2023 and October 30, 2023.

The following documentation and information were used in consideration of the issue:

1. IEP Progress Report Annual Goal dated June 29, 2023 on the student’s IEP dated April 20, 2023
2. Email from Kristen Venable (Principal) to the father, the mother, Carol Lujano (School Psychologist), Julia Neece (Third Grade Teacher), Margaret Barilleaux (Resource Teacher) and Mark Schmidt (Assistant Superintendent of Special Education) on September 15, 2023 at 1:14 p.m. and the father’s reply on September 19, 2023 at 2:38 p.m.
3. Video IVE 09252023 Office 1533 dated September 25, 2023
4. Email from Tracy Edwards to Mark Schmidt dated September 25, 2023 at 11:01 a.m.

5. Notice of Meeting dated September 25, 2023 for a meeting on October 12, 2023
6. Beginning of the Year Benchmark Progress report dated September 25, 2023 including Acadience, FAST, and iREADY scores
7. Email exchange between the parent and Mark Schmidt, Carol Lujano, Margaret Barilleaux, Samantha Lovgren-Urbe (Speech Language Pathologist), and Melissa Hillman (District's Equity Coordinator) beginning September 26, 2023 at 7:57 p.m. through September 27, 2023 at 8:22 a.m.
8. Email exchange between Mark Schmidt, Kristen Venable, and the parent beginning on September 26, 2023 at 06:14 a.m. and ending on September 26, 2023 at 8:36 a.m.
9. Email from Kristen Venable to the father, the mother, Margaret Barilleaux, Carol Lujano, Samantha Lovgren-Urbe, and Mark Schmidt dated September 26, 2023 at 4:29 p.m.
10. Email from Mark Schmidt to Melissa Hillman on September 27, 2023 at 10:44 a.m.
11. Email from Kristen Venable to the father, the mother, Melissa Hillman and Mark Schmidt dated October 6, 2023 at noon
12. Email exchange between the parent and Mark Schmidt, Kristen Venable, and Melissa Hillman beginning October 6, 2023, 3:37 p.m. and ending October 6, 2023 at 3:39 p.m.
13. District's Response to the Complaint, dated October 9, 2023
14. Email from Kristen Venable to the father, the mother, and Mark Schmidt dated October 12, 2023 at 3:56 p.m.
15. Email from Kristin Venable to the father, the mother, and Mark Schmidt dated October 23, 2023 at 11:51 a.m.
16. Email from the parent to Kristin Venable and Mark Schmidt dated October 23, 2023 at 11:59 a.m.
17. Email from Kristen Venable to Julia Neece, Margaret Barilleaux, Carol Lujano, Samantha Lovgren-Urbe dated October 24, 2023 at 7:49 a.m.
18. IEP Meeting Notes dated October 26, 2023

Background Information

This investigation involves a nine-year-old male student currently enrolled in the third grade at Indian Valley Elementary School (IVE) in USD #229. The student was initially found eligible for special education and related services at the age of three under the exceptionality category of Developmental Delay on October 6, 2017 while attending preschool at Oak Hill Elementary School in USD #229. His initial IEP provided specialized instruction, occupational therapy (OT), speech therapy, and language therapy. He transitioned to grade school at Indian Valley Elementary School in August 2020 and USD #229 has continued to provide specialized instruction and related services as required by his IEPs through the current date. His current

re-evaluation was conducted on April 20, 2023 when it was determined that the student continued to meet the eligibility criteria for the exceptionality category of Speech/Language Disorder; a new IEP was written for the student at that time. Because the parent did not consent to the elimination of ESY services that the prior IEP had provided, the district provided ESY services during June, 2023, although the student did not currently qualify for ESY speech-language services.

Issue Investigated

In the written complaint the parent alleged that the school had not provided access to progress reporting records, and that issue was determined to be investigated. In the written complaint. The parent had additional concerns which were not investigated here: first, that the student was being bullied at school, and second, that a school safety office had wrongly yelled at the parent and denied access to the school. Bullying resources were provided to the parent in an email dated October 10, 2023. The second issue is not an IDEA complaint and it did not affect the parent's ability to attend the student's IEP meetings.

1. **ISSUE ONE:** The USD #229, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide the parent access to documents following a parental request for school records, specifically progress reports from ESY (2023) and from the current school year

Issue One

The USD #229, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide the parent access to documents following a parental request for school records, specifically progress reports from ESY (2023) and from the current school year

Applicable Law

Federal statutes and regulations at 34 CFR 300.320(a)(3) require that the IEP include a description of how the student's progress toward meeting the IEP's annual goals will be measured and when periodic reports on the progress the student is making will be made, such as through the use of quarterly or other periodic reports concurrent with the issuance of grade-cards.

Federal statutes and regulations at 34 CFR 300.613 (a) (b) require that districts permit parents to inspect and review any education records relating to their children, including the right to request copies of the records, without unnecessary delay before any IEP meeting or hearing and in no case more than 45 days after the request.

Analysis: Findings of Fact

The parent in the written complaint alleged that the district had not provided progress reports, which he called “regression reports,” for the summer 2023 Extended School Year (ESY) session within 45 days, and that the benchmark data he received in September was not comparable to the ESY report. The parent alleged that no progress reports on his son’s IEP goals were provided properly during the 2023-24 school year. Finally, he alleged that the ESY 2023 report was in error because the case manager listed on the report had left the district at the end of the 2022-23 school year.

The district disputed these allegations. The district replied that the ESY 2023 had been the subject of a previous complaint investigation and the ESY 2023 report was correct and had been provided to the parent. The district asserted that at the time of the complaint, the school district had not yet been in session for a full quarter and so no progress report was yet due to the parent. The district replied that the correct ESY 2023 report had been provided to the parent. Further the district replied that it had gone to extraordinary lengths to provide the documents including benchmark data that the parent requested in a variety of ways, and that the parent had refused to accept receipt of the documents, citing child labor violation when sending documents home with the child, insisting on verbal notice prior to mailing documents, and not accepting the delivery of certified mail.

Findings of the investigation, based on interviews and documents reviewed are:

- The student’s current IEP dated April 20, 2023 requires progress reporting at the end of each grading period.
- Documentation provided to a prior investigator showed IEP progress reports provided to the parent on February 16, 2023 and as of March, 2023.
- The district reported and documentation shows that the student’s progress report dated June 29, 2023 was sent home with the student at the end of the ESY 2023 session. The parent acknowledged that he received this report and provided a copy of this IEP progress report to the investigator. The report shows six goals, two in writing, one in reading, and three in language; each goal shows a progress update dated May 26, 2023 at the close of the 2022-23 school session. The two writing goals show an updated progress note dated June 29, 2023 at the close of the ESY session. The IEP case manager on this report was listed as Cindy Ray. The district confirmed that this was the ESY progress report document sent to the parent.
- The district provided a copy of the report to the investigator at the time of the investigation with exactly the same goal and progress monitoring content. This report lists the current IEP case manager as Alexis Schoendaler.
- In an email to the investigator, the principal reported the explanation for this change: “It is district practice to keep the school year case manager listed through ESY. I explained to [the parent] that Cindy Ray was listed as the case manager but that a different

teacher taught ESY and that teacher completed the progress report. The June 29 Progress Report [he received] is accurate based on what the ESY teacher submitted.”

- Documentation showed that the student’s beginning of the year 2023-24 benchmark data included the following district standardized testing: Acadience (reading composite score at benchmark), FAST (a-Reading assessment showing the student at some risk), and I-Ready (math composite approaching grade 3).
- Documentation showed that the district mailed beginning of the year 2023-24 benchmark data and progress updates on the student’s IEP goals via certified mail at the parent’s request on September 15, 2023. The parent replied that he had not received the certified mail in an email dated September 19, 2023. An email from the principal to the parent dated September 26, 2023 shows that the benchmark data, update on goals, and a Notice of Meeting (NOM) were sent home again with the student and the benchmark data and NOM were attached to the email. A video shows that the principal attempted to hand hard copies of documents to the parent on September 25, 2023 and the parent refused to accept them. In an interview, the parent confirmed this interaction occurred and reported that he did not know what the papers included so he did not want to accept them when he was picking up his child from school. An email from the parent to the district dated September 26, 2023 indicated that he would not accept documents sent home with his son. An email from the district to the parent dated September 26, 2023 informed the parent that there was no requirement for verbal notice prior to written communication nor was there a requirement for certified mail delivery of special education related documentation and that future communication would occur via normal methods of communication.
- According to the school calendar, the end of the first quarter was October 13, 2023.
- The district scheduled an IEP meeting at the request of the parent and provided a Notice of Meeting (NOM) dated September 25, 2023 for a meeting on October 12, 2023. The district reported that the parent informed the district that due to the safety officer banning him from school property he would not attend the meeting. The district reported and documentation showed that they created a zoom option for the parent to attend, which he declined saying it would be difficult for him to understand the proceedings via zoom.
- Documentation showed that this meeting was subsequently rescheduled and held on October 26, 2023 with the student’s mother attending in person at the elementary school with the school team members and the father attending via zoom in the assistant superintendent of special education’s office to facilitate his understanding and participation. The IEP meeting notes dated October 26, 2023 showed that the student’s reading and writing goal assessments, language goal meaning, and benchmark assessments were discussed in the meeting. The assistant superintendent reported

that each of the parent's questions were answered and that the meeting's proceedings were explained till the parent affirmed his understanding during the meeting.

In this case, the parent repeated a concern related to a prior complaint, that the ESY 2023 progress report he had received was erroneous and therefore it was not provided on time. It is found that the district has gone to great lengths to provide the student's progress reports and other communication regarding the student's IEP to the parent, despite obstructions presented by the parent. It is recommended that the district use typical methods of communication (as suggested in the assistant superintendent of special education's email) with the parent in further communication regarding his son's special education. It is found that the district provided the correct ESY progress report to the parent and that the district provided beginning of the year 2023-24 benchmark data to the parent in September, 2023. It is found that the complaint was filed before the end of the first quarter of 2023-24 school year when the first fall IEP update was required by the student's IEP and therefore no violation occurred at that time. It is found that these reports have been provided to the parent promptly and well within a 45-day time period and therefore no violation of 34 CFR 300.320(a)(3) or 34 CFR 300.613 (a) (b) occurred.

Conclusion

Based on the foregoing, it *is not substantiated* that the USD #229, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide the parent access to documents following a parental request for school records, specifically progress reports from ESY (2023) and from the current school year

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)