

KANSAS STATE DEPARTMENT OF EDUCATION
SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT
FILED AGAINST
UNIFIED SCHOOL DISTRICT # 261
ON OCTOBER 5, 2023

DATE OF REPORT NOVEMBER 7, 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 #261 (Haysville 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 5, 2023 and the 30-day timeline was extended to allow for a systemic investigation.

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

1. Letter dated September 15, 2023 written by Angela Karraker, Director of Special Education, to the complainant and the parents of 21 other students at Campus High School
2. Formal Complaint Request Form signed by the complainant on September 26, 2023
3. Response to the Allegations dated October 12, 2023 written by Dr. Karraker
4. Chart listing the 46 students with IEPs requiring speech/language therapy services enrolled at Campus High School
5. Individualized Education Program (IEP) for the student dated November 14, 2022
6. IEPs for the other 21 students who did not receive speech/language therapy services at Campus High School during the 2023-24 school year
7. Draft copy of the student’s IEP dated October 11, 2023
8. Interview with the complainant on October 23, 2023
9. Interview with Dr. Karraker, on October 24, 2023
10. First quarter grade card of the student

Background Information

The student is a 16-year old male currently enrolled in the eleventh grade in USD #261 and attends Campus High School. His parent reports and records reflect diagnoses including Autism, Anxiety, and Traumatic Brain Injury due to brain cancer.

The student began receiving early childhood special education and related services in preschool in USD #261 and has continuously received special education and related services during his school career. The student was most recently reevaluated on December 2, 2021 and was found to continue to be eligible for special education and related services at that time.

Issues Investigated

Based on the written complaint, three issues were identified and investigated.

Issue One

USD #261, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to implement the IEP of the student and 20 additional students at Campus High School, specifically by not providing the required speech/language services during the 2023-24 school year.

Applicable Law

Federal regulations at 34 C.F.R. 300.323(c)(2) requires 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. Federal regulations at 34 C.F.R. 300.17 states that when special education and related services are provided in conformity with the IEP so that the student is making progress towards achieving the IEP goals, the student is receiving a free appropriate public education.

Analysis: Findings of Fact

The parent reported that USD #261 failed to provide the student with the required speech/language therapy services since the beginning of the school year. The parent further alleged that speech/language services have not been provided for any of the other students with IEPs who attend Campus High School.

The IEP in effect during the 2023-24 school is dated November 14, 2022 and includes one goal related to pragmatic language skills. In order for the student to achieve this IEP goal, the IEP requires 20 minutes per week of speech/language therapy in the special education setting, as well as special education support in the general education setting for his assigned English, math, science, social studies, and electives classes.

USD #261 acknowledged that due to a late staff resignation, there was only one speech/language pathologist assigned to Campus High School at the beginning of the school year.

Angie Karraker, Director of Special Education, explained that multiple and ongoing efforts have been made to replace this open staff position during the summer; however, these efforts were unsuccessful so an administrative decision was made to prioritize providing the available speech/language services to the students with the most intense communication needs, such as students requiring augmentative communication or multiple therapy sessions weekly when school started in August. Using this delivery model, 24 students received the required speech/language services required by their IEPs; however, the student and another 21 students were not receiving the speech/language services required by their IEPs at the beginning of the school year. Dr. Karraker reported that ongoing efforts were made during August and September to attempt to hire or contract for a second SLP at Campus High School. On September 15, 2023, Dr. Karraker sent an email to the parents of each of the 22 students who were not receiving the required speech/language therapy services at Campus High School. This email stated:

For the current 2023-2024 school year, there has been disruption of speech services for your child due to a late resignation and inability to hire staff at this time. We have worked diligently to obtain a staff member but have been unable to find anyone who is available and qualified. At this time, we are attempting to contract services with an agency to provide speech and language services, which may be in-person or through an online platform.

The disruption will result in a loss of approximately 8-10 weeks of service. This disruption may also impact updated annual present levels, reevaluation assessment, and reporting at annual or reevaluation IEP meetings. We are tracking any services that are missed during this time. Upon hiring a Speech Language Pathologist, data will be collected to determine, as a team, if your child has not maintained or made progress toward his speech or language goal. If they have not, the team will discuss offering compensatory services to help your child make progress.

We apologize for the disruption in speech and language services at this time. Please let me know if you have any concerns or questions at this time.

Dr. Karraker reported the district has recently contracted with two currently employed speech/language pathologists (SLPs) to provide services during their plan periods for additional compensation. These services began on October 18, 2023. In an October 23, 2023 email, Dr. Karraker noted that she has contacted each of the 22 students' parents about reinstating services and the plan to determine if compensatory services are owed for the failure to provide the required IEP services listed in the IEP.

The first day of the 2023-24 school year was August 17, 2023. With speech/language therapy services beginning the week of October 18, 2023, the student missed a total of nine weeks of services or a total of 180 minutes of speech/language therapy during the 2023-24 school year.

Based on a review of the IEPs for the 21 other students who were not provided with speech/language therapy services during the first nine weeks of the school year, these students missed the following amount of services:

Student #	Required SLP services	Total amount missed
1	40 minutes per week	360 minutes
2	15 minutes consult per month	30 minutes
3	20 minutes per week	180 minutes
4	20 minutes per week	180 minutes
5	20 minutes per week	180 minutes
6	15 minutes consult every nine weeks	15 minutes
7	20 minutes per week	180 minutes
8	20 minutes per week	180 minutes
9	10 minutes consult per month	20 minutes
10	10 minutes consult per month	20 minutes
11	10 minutes every nine weeks	10 minutes
12	10 minutes consult per month	20 minutes
13	20 minutes per week	180 minutes
14	20 minutes per week	180 minutes
15	20 minutes per week	180 minutes
16	20 minutes per week	180 minutes
17	20 minutes per week	180 minutes
18	40 minutes per week	360 minutes
19	20 minutes per week	180 minutes
20	20 minutes per week	180 minutes
21	20 minutes per week	180 minutes

Conclusion

Federal regulations at 34 C.F.R. 300.303(c)(2) require USD #261 to ensure that the special education and related services are made available to the child in accordance with the child's IEP. In this case, the speech/language therapy services were not provided to a total of 22 students as required by each of their IEPs for nine weeks during the 2023-24 school year.

The Office of Special Education Programs (OSEP) in the Department of Education issued policy guidance on March 8, 2007 in Letter to Clark stating that local educational agencies (LEAs) are required to ensure that all children with disabilities receive a free appropriate public education (FAPE) consistent with their individualized education programs (IEP). General practice is that

services missed because of student absences are not made up because the district was ready, willing, and able to have provided the required special education and related services while services missed because of the absence of a provider are made up or provided by a qualified substitute.

OSEP further encouraged agencies to consider the impact of the absence of a child or provider on the child's progress toward meeting annual goals. OSEP stated that determination of whether an interruption in services constitutes a denial of FAPE must be made on a case-by-case basis.

In this case, the lack of services was caused by the absence of a provider, not the absence of the student. While the district has made ongoing efforts to hire a qualified SLP, the student missed a total of 180 minutes of speech/language therapy to address his pragmatic language goal as required by the student's IEP and the other 21 students missed between 10 and 360 minutes of speech/language therapy services during the 2023-24 school due to the staff shortage.

No findings related to the denial of FAPE for these 22 students can be made at this time because current data is not yet available regarding the long-term impact of the interruption of the speech/language therapy services caused the staff shortage. It is noted that the district has already made plans to collect data to determine if or to what extent the failure to provide the required speech/language therapy services impacted each the 22 student's progress towards meeting their individualized IEP goals.

However, based on the foregoing, *it is substantiated* that USD #261 failed to implement the student's IEP and the IEPs of 21 additional students, specifically regarding the provision of speech/language therapy services of between 10 and 360 total minutes over a nine week period during the 2023-24 school year.

Issue Two

USD #261, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to implement the IEP of the student, specifically by not providing the required paraprofessional support services during the 2023-24 school year.

Applicable Law

Federal regulations at 34 C.F.R. 300.303(c)(2) requires 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. Federal regulations at 34 C.F.R. 300.17 states that when special education and related services are provided in conformity with the IEP so that the student is making progress towards achieving the IEP goals, the student is receiving a free appropriate public education.

Analysis: Findings of Fact

The parent reported that USD #261 failed to provide the student with the required special education support services in the US Modern History class in the general education setting during the 2023-24 school year. The parent noted that she first shared her concerns with Dr. Karraker on September 15, 2023.

The IEP in effect during the 2023-24 school is dated November 14, 2022 and includes one goal related to pragmatic language skills. In order for the student to achieve this IEP goal and receive the required classroom accommodations in the general education setting, the IEP requires both the speech/language therapy services as well as special education support in the general education setting for “the length of the scheduled class” for his assigned English, math, science, social studies, and electives classes.

The findings of Issue One are incorporated herein by reference.

On September 22, 2023, Marvin Miller, Special Education Teacher / Case Manager, reported to Dr. Karraker that a paraprofessional was not assigned to the US Modern History class in the general education setting. This was resolved when a paraprofessional was reassigned to the US Modern History class beginning September 25, 2023.

Dr. Miller once again determined the student was not being supported by a paraprofessional in another general education classroom on October 11, 2023 due to a paperwork error on the building’s paraprofessional schedules. This was addressed and resolved that same day through a staff schedule change.

USD #261 acknowledged that student was not supported in the US Modern History class and one additional class as required by the IEP during at least some portion of the first quarter of the 2023-24 school year. However, the district reported the student received passing grades and credit at the end of the first quarter on October 13, 2023 for each of his assigned classes.

Conclusion

Federal regulations at 34 C.F.R. 300.300.323(c)(2) require USD #261 to ensure that the special education and related services are made available to the child in accordance with the child’s IEP. In this case, the interviews and documentation *support a finding* that the district failed to implement the student’s IEP as written, specifically the special education support in two of the student’s general education classes during the first quarter of the 2023-24 school year.

While the student received passing grades in all classes, again, no findings related to the denial of FAPE for the student can be made at this time because current data is not yet available regarding the long-term impact of the failure to provide the special education supports in those two general education settings on the student’s progress towards meeting his IEP goal for increasing pragmatic language skills. It is noted that the district has already made plans to collect data to determine if or to what extent the failure to provide the required services in conformity with the student’s IEP impacted his progress towards meeting the IEP goal addressing pragmatic language.

Issue Three

USD #261, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to implement the IEP of the student, specifically the required accommodations for 1) separate environment for testing, 2) giving two-step directions, 3) providing copies of notes, and 4) checking often for understanding during the 2023-24 school year.

Applicable Law

Federal regulations at 34 C.F.R. 300.323(c)(2) requires 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. Federal regulations at 34 C.F.R. 300.17 states that when special education and related services are provided in conformity with the IEP so that the student is making progress towards achieving the IEP goals, the student is receiving a free appropriate public education.

Analysis: Findings of Fact

The parent reported that USD #261 failed to provide the student with the required accommodations in all of his general education classes as follows:

- Testing in a separate setting was only provided in the English 11 and Algebra 2 classes.
- Giving two-step directions was not provided in any class on a regular basis.
- Providing copies of notes was only consistently done in the US Modern History class.
- Checking for understanding was only consistently done in the English 11 class.

The parent reported the student was struggling in his classes and becoming increasingly frustrated at school.

The IEP in effect at the time of the allegations is dated November 14, 2022 and includes the following accommodations: 1) separate environment for testing, 2) giving two-step directions, 3) providing copies of notes, and 4) checking often for understanding. All of these accommodations are to be provided in "general and special education classes".

USD #261 reported that the special education teacher / case manager provided a copy of the student's accommodation to all of his general education teachers on August 24, 2023. The parent first shared concerns regarding the accommodations not being provided with the special education director on September 15, 2023. These concerns were investigated and it was discovered that his teachers were providing notes digitally rather than in a paper format and, that while his teachers were making efforts to consistently provide all of the accommodations, there were instances when accommodations were not provided in the manner that the parent believed they were to be provided. This miscommunication between the school staff and parent was addressed in an IEP team meeting held on October 11, 2023.

The district and parent both reported that the student's IEP was reviewed and revised on October 11, 2023. Accommodations were discussed, clarified, and updated to be more specific. In addition, two goals were added to the IEP to address social/emotional skills and one goal was added to address academic skills.

On October 12, 2023, the special education teacher / case manager worked with all of the student's general education teachers to review first quarter missing assignments and to clarify expectations for providing the accommodations listed in his IEP. They determined that some of the work would be exempt or reduced since all of the accommodations had not been consistently provided during the first quarter. USD #261 reported the student received passing grades and credit for each of his assigned classes at the end of the first quarter on October 13, 2023.

Both the parent and school staff report that the student is making good progress in all of his academic classes at this time.

Conclusion

Federal regulations at 34 C.F.R. 300.303(c)(2) require USD #261 to ensure that the special education and related services are made available to the child in accordance with the child's IEP. In this case, the interviews and documentation *support a finding* that the district failed to implement the student's IEP as written, specifically the accommodations in all general education classes.

However, FAPE appears to have been addressed through the review and revision of the student's IEP on October 11, 2023. In addition, any impact on the student was mitigated through a comprehensive review of the first quarter missing assignments, providing appropriate accommodations, and the student earning passing grades in all of his classes at the end of the first quarter.

Summary of Conclusions/Corrective Action

1. **ISSUE ONE:** A violation of federal regulations at 34 C.F.R. 300.303(c)(2) is substantiated because the district failed to provide the required speech/language therapy services to 22 students during the 2023-24 school year. Corrective action is required as follows:
 - a. CORRECTIVE ACTION:
 - i. USD #261 shall submit a written statement of assurance to Special Education and Title Services (SETS) stating that it will ensure that the special education and related services are made available to the students at Campus High School in accordance with each child's IEP.
 1. No later than December 5, 2023

- ii. USD #261 shall reconvene the student's IEP team and will offer a minimum of 180 minutes of speech/language therapy in the special education setting as described in the November 14, 2022 IEP as compensatory services for failing to implement the student's IEP during the 2023-24 school year. USD #261 shall provide SETS with a copy of the written plan for providing the compensatory services offered and the parents' decision on whether to accept the offer, in whole or in part, no later than 10 days from the date of the IEP team meeting.
 - 1. No later than December 31, 2023
 - iii. USD #261 shall reconvene each of the other 21 student's IEP teams and will offer as a minimum the amount of speech/language therapy services shown in the chart included in Issue One as compensatory services for failing to implement each of these students' IEPs during the 2023-24 school year. USD #261 shall provide SETS with a copy of the written plan for providing these compensatory services offered and each of the parents' decision on whether to accept the offer, in whole or in part, no later than 10 days from the date of each IEP team meeting.
 - 1. No later than February 1, 2024
 - iv. USD #261 shall provide IEP goal progress reports to the parents of all 22 students for each of their speech/language goals at the end of the first semester in order to determine if the absence of the SLP impacted the provision of FAPE to each of these students during the 2023-24 school year. If a student is not making progress towards one of these IEP goals, USD #261 shall reconvene that student's IEP team in order to review and revise, if appropriate, the IEP in order to provide FAPE to the student.
 - 1. No later than February 1, 2024
1. **ISSUE TWO:** A violation of federal regulations at 34 C.F.R. 300.300.323(c)(2) is substantiated because the district failed to provide the required special education support services in the general education setting to the student during the 2023-24 school year. Corrective action is required as follows:
- a. **CORRECTIVE ACTION:**
 - i. USD #261 shall provide IEP goal progress reports to the parent of the student at the end of the first semester in order to determine if the absence of the special education support services in the general education setting impacted the provision of FAPE to the student during the 2023-24 school year. If the student is not making progress towards his IEP goals, USD #261 shall reconvene the student's IEP team in order to review and revise, if appropriate, the IEP in order to provide FAPE to the student.
 - 1. No later than February 1, 2024

2. **ISSUE THREE:** A violation of federal regulations at 34 C.F.R. 300.300.323(c)(2) is substantiated because the district failed to provide the required special education support services in the general education setting to the student during the 2023-24 school year. Corrective action is required as follows:
 - a. CORRECTIVE ACTION:
 - i. USD #261 shall provide training to all general education teachers and paraprofessionals working with the student regarding the requirement to provide the accommodations as written in the IEP. USD #261 will provide SETS with a copy of the sign-in sheet documenting who received this training as well as the name and credentials of the person who provided the training. In addition, USD #261 will provide SETS with any handouts and/or a copy of the presentation.
 1. No later than December 31, 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)