

KANSAS STATE DEPARTMENT OF EDUCATION
SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT
FILED AGAINST
UNIFIED SCHOOL DISTRICT #233
ON DECEMBER 28, 2023

DATE OF REPORT JANUARY 29, 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," "the mother," or the parent."

The complaint is against USD #233. In the remainder of the report, USD #233 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 December 28, 2023 and the 30-day timeline ends on January 29, 2024 with a one day state holiday.

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(s).

Additionally, the Complaint Investigator interviewed the following during a school interview on January 17, 2023 Catherine Wormus, Speech Language Pathologist & Case Manager, Anne Otroszko, Math Teacher, Kathryn Feightner, School Social Worker, Alexis Wilkerson, Assistant Principal, Jenny Spears, School Psychologist and Ashley Enz, Special Services Coordinator. The Complaint Investigator interviewed the parent on January 20, 2024 and the student on January 21, 2024.

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

1. Evaluation Report dated December 10, 2020
2. Eligibility Determination Speech or Language Impairment dated December 10, 2020
3. Notice of Meeting (NOM) dated November 16, 2022
4. Individualized Education Program (IEP) dated December 6, 2022
5. Prior Written Notice (PWN) for Identification, Initial services, Placement, Change in Services, Change of Placement, and Request for Consent dated December 6, 2022
6. District Transition Planning Services Notice dated December 6, 2022

7. Related Service Provider Service Log 2023-2024 for student for August -May, includes table of dates and handwritten log dated between August 17 through December 12 2023
8. The "I" in IEP: Considering Individual Student Needs in Required Processes PowerPoint presented to School Psychologist dated September 6, 2022
9. Emails between special education coordinator and parent dated November 10, 2023 between 1:30 p.m. and 2:34 p.m.
10. NOM dated November 15, 2023
11. Emails among case manager, parent and school psychologist dated November 27, 2023 between 2:10 p.m. and 3:20 p.m.
12. Emails between special education coordinator and parent dated December 1 between 9:06 p.m. and 12:40 p.m.
13. Emails between parent and school psychologist dated December 1 between 2:10 p.m. and 2:24 p.m.
14. IEP dated December 1, 2023
15. PWN and Request for Consent dated December 1, 2023
16. Emails between school psychologist and parent dated December 5, 2023 between 11:02 a.m. and 8:16 p.m.
17. Emails between parent and social worker dated December 6, 2023 between 8:19 a.m. and 12:32 p.m.
18. Table of eHallpass Record dated from December 11, 2023 through January 5, 2024. Included location and time in and location and time out.
19. Emails between social worker to parent dated December 12, 2023 between 8:25 a.m. and 12:37 p.m.
20. PWN for Evaluation or Reevaluation and Request for Consent dated December 12, 2023
21. Student progress report for Algebra II dated December 18, 2023 includes 14 lines of handwritten notes at end of report.
22. Formal Complaint District Written Response received by complaint investigator on January 12, 2024
23. Email from complaint investigator to district dated January 19, 2024 at 2:04 p.m.
24. Email from district to complaint investigator dated January 23, 2024 at 4:50 p.m.

Background Information

The student attends Olathe South High School and is a junior. According to past evaluation reports the student first began receiving special education and related services as a preschooler under the categories of Autism and Speech language impairment in another state. When he moved to this district as a first grader, he had an active IEP. The last evaluation report dated December 10, 2020 documents the student as eligible for special education as a student with a speech or language impairment. It further documented the student has had previous

diagnoses and health concerns including autism, ADHD, and dyslexia. The student is enrolled in general education classes and receives special education services 45 minutes every two weeks. Additionally, he has accommodations for instruction and assessment.

Issues Investigated

1. **ISSUE ONE**: USD #233, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to conduct a three-year reevaluation of a special education student during the 2023-2024 school year.
2. **ISSUE TWO**: USD #233, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to implement the student's IEP specifically, the accommodation, to aid in executive functioning teacher will monitor task completion and send pass to [student] to work in advisory or refer to learning support during the 2022-2023 school year.

Issue One

USD #233, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to conduct a three-year reevaluation of a special education student during the 2023-2024 school year.

Applicable Law

Federal regulations at 34 C.F.R. §300.303(b)(20) state statutes at K.S.A. §72-3428(h)(2)(B) state an agency shall conduct a reevaluation of a child at least once every three years, unless the parent and the agency agree that a reevaluation is unnecessary.

The Federal register on August 14, 2006 further explains the federal regulations and state statutes as, "Prior to conducting a reevaluation the parent and the school shall determine whether a reevaluation is needed. They must consider the child's educational needs, which may include whether the child is participating in the general education curriculum and being assessed appropriately. The parent and the school will discuss the advantages and disadvantages of conducting a reevaluation, as well as what effect a reevaluation might have on the child's educational program" (p. 46640, 46641).

The Kansas Special Education Process Manual lists circumstances when a reevaluation is not required:

1. Before the termination of a child's eligibility due to graduation with a regular diploma.
2. Exceeding the age of eligibility for FAPE, which would be the end of the school year in which the student becomes 21 years of age.
3. When the school and parent agree that a reevaluation is not needed.

Analysis: Findings of Fact

The parent alleged that neither student nor parent were considered in the decision to waive the triennial evaluation until receiving an email six school days prior to the annual IEP and ten school days prior to the triennial evaluation due date.

The student's case manager reported that previous conversations with the student and parent led her to believe a reevaluation would not be wanted. In preparation of the December 1, 2023 annual IEP the case manager proposed waiving the evaluation in an email on November 27, 2023 to which the parent stated she would not agree. Upon receiving this information, the case manager contacted the school psychologist, who contacted the parent the same day, to further understand her concerns. The district has since received consent from the parent to proceed with the reevaluation and report it will be completed within the 2023-24 school year.

The student's last triennial evaluation is dated December 10, 2020.

The case manager stated during an interview on January 18, 2023 that during meetings with the mother during the spring of the 2022-2023 school year and during a conference near the end of the first quarter they talked, and the parent had not expressed a concern about evaluation, instead discussed the educational piece and an accommodation for when the student has migraines.

An email from the case manager to the parent on November 27, 2023 at 2:10 p.m. requested, "This is [student's] re-eval IEP...are you okay with waiving the re-eval? Typically, if we are not changing placement, then at high school we will waive the re-evaluation."

The parent responded to the case manager on November 27, 2023 at 2:50 p.m. in an email., "We should have discussed his need for reevaluation 60 school days prior to his triennial date of Dec 9th and will be out of compliance. ...but will not agree to waive [student's] triennial evaluation.

The student's case manager during interview on January 18, 2024 and in a follow up email on January 19, 2024 clarified her comment about reevaluation as follows:

When talking with the School Psychologist about attending the meeting on December 1st, she asked me if I needed any additional testing or was changing placement. I told her that I didn't need any more testing and Mom hadn't indicated any need for testing or change of placement. She said we would need to do the waiver for no testing needed at the IEP. I assumed that this was the route we would take since in our correspondence at conferences and in email, the parent never indicated that she wanted to do a re-evaluation. On November 26, 2023, I e-mailed Mom asking if she would be okay with signing the waiver for no testing needed. My wording was intended to reflect my understanding from our school psychologist and to let the parent know when we would typically request to conduct a re-evaluation – I was attempting to imply that those circumstances (additional testing or possible change of placement) didn't apply to the student at this time, but was leaving it open

for input on the recommendation. On November 27th, heard back from Mom that she did not want a waiver and wanted a re-evaluation. That was the first time that I heard of her wanting additional testing. I immediately contacted our school psychologist, and she e-mailed Mom to find out what kind testing she wanted. Mom agreed to have the IEP on December 1st as scheduled and we would address the re-evaluation after the IEP meeting.

The email dated November 27, 2023 at 3:30 from the school psychologist to the parent states, "...Are you suspecting that we need an exceptionality change, to specific learning disability for [student]'s dyslexia? Or would you just like some supplemental reading assessments to guide speech and language services?" to which the parent responded on December 1, 2023 at 12:37 with, "...I don't feel [case manager] and I agree on this, as does [student], that SLP describes [student's] learning needs at all. [Student]'s is dyslexic with ADHD and his needs are associated with [student] lagging skills in EF/reading and Math, specifically phonological and orthographic processing disorders. I want to ensure [student] needs are accurately assessed and documented in order to make informed decisions for [student] post secondary transition.

The student, during an interview on January 21, 2024 stated he would like any reevaluation to help him learn how to focus and learn better so he can be more successful as he goes to college.

The PWN dated December 1, 2023 records, "Team will be reviewing records to determine if any additional testing needs to be completed before [student] graduates from High School." And [Student's] triennial evaluation is due December 9th. The parent is requesting the district complete [student's] triennial evaluation to determine identification as a disabled student with dyslexia and ADHD in need of specially designed instruction."

The PWN for Evaluation or Reevaluation and Request for Consent dated December 12, 2023 proposed to use existing data to evaluate health/motor ability, vision, hearing, social/emotional status/behavioral status, general intelligence, academic performance, communicative status, and transition skills to conduct a reevaluation. The PWN states, "It was considered to collect additional data to determine whether the specific learning disability label due to dyslexia and/or the other health impairment label due to concerns with ADHD were appropriate for [student]. However, [student] has participated in a variety of formal and informal assessments over the years. [Student] has (sic) been diagnosed with both dyslexia and ADHD by medical professionals and the team has sufficient data and information to make an eligibility determination without any additional formalized assessments." It is recorded in Other Factors considered relevant to the proposed action: "As a result of this reevaluation, the team may determine that different services due to dyslexia and/or ADHD are more appropriate than [student's] current special education services for speech and language difficulties. This determination could potentially change service providers, add services, or remove special education services." Consent was obtained from the parent on December 12, 2023.

As a part of this complaint an allegation was made generally that high school student's triennial evaluations are routinely waived based on the complainant's experience in her role as an family advocate for students in the district. Although this complaint is first, a child specific complaint, the complaint investigators reviewed IEP documentation of the other two students during the last 12 months. Of these two additional students, student one was reevaluated during September 2021 and is currently a twelfth grader and student two was reevaluated during February 2022 and is currently a tenth grader.

The training PowerPoint dated September 6, 2023 presented to all school psychologists in the district reviewed guidelines and procedural steps for reevaluations, guidance from KSDE and recent court cases affecting evaluation and reevaluation.

Conclusion

The student is a junior and has one more year in high school so the district does not meet the August 14, 2006, p. 46644 Federal register statement that the district is not required to conduct a reevaluation for a child to meet the entrance or eligibility requirements of a post-school institution or agency because to do so would impose a significant cost on the school. Therefore, the district has three years from the date of the most current evaluation, (December 10, 2020) to conduct a new evaluation unless the parent and district agree to waive the evaluation. Documentation shows that the district had a belief that the parent would waive the reevaluation, but as evidenced by the email dated November 27, 2023 the parent asserts that she does not agree to waive the re-evaluation, and therefore the district has the obligation to conduct a triennial evaluation. It is noted that the district has proceeded to conduct a reevaluation and consent was provided by the parent on December 12, 2023.

Based on the foregoing, *it is substantiated* that USD #233 failed to conduct a three-year reevaluation of a special education student during the 2023-2024 school year as the district did not have agreement with the parent to waive the reevaluation or provide new evaluation every three years from the date of the previous evaluation.

Issue Two

USD #233, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to implement the student's IEP specifically, the accommodation, to aid in executive functioning teacher will monitor task completion and send pass to [student] to work in advisory or refer to learning support during the 2022-2023 school year.

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 alleges that the IEP accommodation, to aid in executive functioning the teacher will monitor task completion and send pass to [student] to work in advisory or refer to learning support whenever [student] is behind two or more assignments" is not followed as indicated by the synergy grade book (missing 17 assignments in Math), present levels of performance as well as student report and parent inquiry. It is noted that the SLP will monitor missing assignments.

The district responds that the student's teachers and case manager (SLP) have implemented this accommodation as evidenced by eHallpass records and the case manager's service log.

The December 6, 2022 and December 1, 2023 IEPs read, "Classroom teacher, [student], and SLP will monitor missing assignments" and includes the following rationale, "To aid in executive functioning teacher will monitor task completion and send pass to student to work in advisory or refer to learning support." The frequency indicates this should occur whenever [student] is behind two or more assignments. The district states that the case manager's service log specifically notes when she monitored his grades and missing assignments.

The district, student and parent agree that the eHallpass system is schoolwide, generally occurring on Tuesdays where students or teachers can initiate an appointment to meet to discuss assignments, get additional instruction, get answers to questions, or complete assignments.

The district reports that the accommodation is an "overlay" to the eHallpass system for the student to guide him to prioritize which classes to use the eHallpass.

The student reports during interview that after the parent filed the complaint the district started to meet with the student to let the student know he was behind at least two assignments and it has really helped. He stated that even though he can see his assignment and grade status it is hard for him to keep track of that and having a regular check in with that feedback really helps him keep on track. He stated that his English II teacher did it and it was really helpful.

He described that when he is sent more than one eHallpass he tends to choose English because they are often big projects and because of his dyslexia he needs the face-to-face time with the teacher about all the written aspects of the assignment, whereas in Math they are often missed assignments and those require his focus and concentration. He states that he can work on those missed assignments during his concentrated time with the case manager rather than meet with the math teacher.

The parent reports that the accommodation, along with some of the other accommodations are the specially designed instruction for the student that support the student's IEP goal of, "When given his weekly grade update, [student] will analyze his grades, tests and missing assignments to list and prioritize what further actions is needed and explain how to implement it with 90% accuracy on three out of four sessions by November 30, 2024.

The district notes that the student's math grade began to decline on October 31, 2023 due to missing assignments accumulated from several days of excused absences and therefore sent an eHallpass to the student on 11/7 (student absent); 11/9 (student declined pass); 11/10 (student went to different location than eHallpass location); 11/13 (student utilized pass); 11/27 (student absent); 11/28 (student utilized pass); 11/30 (student utilized pass). In addition, eHallpass records show that the student initiated passes to make up work or talk with a teacher on 11/13, 11/17, 12/1, and 12/12.

The eHallpass record and Service Log report that the student either met with the case manager or teacher or student on 8/21, 8/22, 8/28, 8/29, 9/1, 9/11, 9/25, 10/2, 10/5, 10/9, 10/12, 10/12, 10/16, 10/23, 10/27, 11/10, 11/13, 11/17, 11/28, 11/30, 12/1, 12/7, 12/12 to review missing assignments and to direct him to a teacher when in need of assistance.

An email from the district to the complaint investigator on January 23, 2024 clarified, "After checking with Ben's teachers, his case manager reported that during 10/30-11/3, he did not have 2 missing assignments in any single class. His teachers confirmed 1 missing assignment in American History and 1 missing assignment in Math (both from the day he was absent, 10/31)."

The district report that the student's math teacher and case manager also follow up with the student whenever an eHallpass is created, but not used, going beyond what is required by the accommodation to support him. Both also report they developed a plan with Student to allow him to get caught up in a reasonable time. His math teacher reports she created a pass for him on January 5, 2024 to begin this plan.

An email from parent to special education coordinator states, "[student] hasn't been using [student] time with [case manager] and has been preferring to work during guided study or has been staying in advisory. It seems [student] is needing to spend time with [student] Math teacher perhaps in guided study or be reminded of the lab in the library when [student] can also access help. I don't think [student] is using the tools there.

Conclusion

Special education means specially designed instruction, at no cost to the parent, to meet the unique needs of a child with a verified disability, including classroom instruction, home instruction, instruction in hospitals and institutions and in other settings and instruction in physical education. The term includes travel training, vocational education, speech-language pathology, occupational therapy, and physical therapy. Conversely, an accommodation serves

to provide students with opportunities to achieve the same outcomes and to obtain the same benefits as students without disabilities.

The accommodation as written specifies that an eHallpass is to be generated by a general educator, the case manager, or the student when the student has two or more missing assignments. It is found that at least one eHallpass was generated weekly during the 2023-2024 school year. Further, the teachers and case manager described how they monitored assignments. The parent and student describe that feedback and assistance in how to plan based on missing assignments is necessary for the student to succeed in his school career.

Based on the foregoing, *it is not substantiated* that USD #233 failed to implement the student's IEP specifically, the accommodation, to aid in executive functioning teacher will monitor task completion and send pass to [student] to work in advisory or refer to learning support during the 2022-2023 school year. It is likely that the parent and student priority to receive feedback and assistance to plan when falling behind on assignments be addressed through specially designed instruction rather than an accommodation.

Summary of Conclusions/Corrective Action

1. **ISSUE ONE:** A violation of 34 C.F.R. §300.303(b)(20 and K.S.A. §72-3428(h)(2)(B) was found for the student based on review of timelines in the documentation. Corrective action is required as follows:
 - a. **CORRECTIVE ACTION:**
 - i. USD #233 shall submit a written statement of assurance to Special Education and Title Services (SETS) stating that it will comply with state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA) at Federal regulations at 34 C.F.R. § 300.303(b)(20 and K.S.A. § 72-3428(h)(2)(B) by ensuring that case managers or school psychologists of high school aged students contact families with enough time to explain the role of re-evaluation for high school aged students to complete a reevaluation within three years or document the decision to waive the reevaluation.
 - ii. **Date due:** Within 30 calendar days of the date of this report, January 25, 2024
2. **ISSUE TWO:** 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 review of documentation and interviews with district staff, parent, and student. 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)