

KANSAS STATE DEPARTMENT OF EDUCATION
SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT
FILED AGAINST
UNIFIED SCHOOL DISTRICT #337
ON FEBRUARY 26, 2024

DATE OF REPORT APRIL 4, 2024

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

The complaint is against USD #337 (Royal Valley Public Schools) who contracts with the Holton Special Education Cooperative (HSEC) for special education services. In the remainder of the report, these two responsible public agencies may 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 February 26, 2024 and the timeline to investigate the allegations was extended due to the district’s spring break.

Evidence Reviewed

During the investigation, the Complaint Investigator, Nancy Thomas, reviewed all evidence and documentation, which was provided by both the district and the complainants. It is noted that the parents also provided documentation related to concerns for implementation of the IEP; however, this documentation was not considered in the investigation as it does not relate to the allegations being investigated. The parent was advised that any additional allegations of noncompliance must be addressed following the dispute resolution procedures described in the IDEA.

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

1. Formal Complaint dated February 27, 2024 written by the father
2. Response to the allegations dated March 25, 2024 and written by Amy Haussler, Director of Special Education
3. Evaluation Report dated January 21, 2022
4. Individualized Education Program (IEP) dated February 8, 2022
5. IEP Goal Progress Report for the February 8, 2022 IEP

6. IEP dated February 6, 2023
7. Prior Written Notice (PWN) for Identification, Special Education and Related Services, Educational Placement, Change in Services, Change of Placement, and/or Request for Consent dated February 6, 2023
8. IEP Goal Progress Report for the February 6, 2023 IEP
9. IEP dated January 31, 2024
10. PWN dated January 31, 2024
11. IEP Goal Progress Report for the January 31, 2024 IEP
12. Email dated February 6, 2024 at 8:14 AM written by the complainants to school staff
13. Email dated February 6, 2024 at 8:46 AM written by Rhonda Sayles, Assistant Principal, to the parents
14. PWN dated February 23, 2024

Also as part of the investigation, the parents were interviewed by telephone on March 19, 2024. In addition, USD #337 made the following staff available for a telephone interview on March 21, 2024:

Amy Haussler, Director of Special Education for HSEC
Aaric Davis, Superintendent
Keith Glotzvach, Principal
Rhonda Sayles, Assistant Principal
Leslie Smith, School Psychologist
Clara Sowers, Special Education Teacher
Melissa Peven, HSEC Special Education Coordinator
Tara Ludusch, HSEC Special Education Mentor for Ms. Sowers

Background Information

The student is a 14-year old male currently enrolled in the eighth grade in USD #337 and attends his neighborhood school, Royal Valley Middle School. The student transferred into this district in the second grade with an individualized education program (IEP) for speech therapy services.

Both the parents and district staff reported that the student received medical diagnoses of intellectual disability, attention deficit hyperactivity disorder (ADHD), and oppositional defiant disorder (ODD) when he was in elementary school. The student's most recent reevaluation for special education was conducted on January 21, 2022 and the multidisciplinary team determined that the student met the eligibility criteria for the exceptionality of Intellectual Disability. The student currently has an IEP and receives special education services.

Issues Investigated

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

Issue One

USD #337, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to develop an IEP designed to provide a free appropriate public education (FAPE) to the student, specifically by not reviewing and revising the IEP, as appropriate, during the past 12 months.

Positions of the Parties

The parents allege USD #337 failed to review and revise the student's IEP as required. They indicated that the student has failed to meet the goals in his IEP for several consecutive years without ever adjusting the goals or enhancing the special education services to achieve the goals. The parents believe that the district has not accurately reported the student's progress towards his IEP goals for the past several years.

The LEA reported that the student's annual IEPs have been rewritten each school year with updated information. They also report the student has made progress on his IEP goals from year to year. USD #337 indicated that school team recommended higher goals for reading and math at the most recent IEP team meeting; however, the parents refused and wanted lower expectations. The LEA believes the student's IEPs were reviewed and revised as required by the IDEA in order to provide the student with FAPE.

Applicable Law

Federal regulations implementing the IDEA at 34 C.F.R. 300.320(a)(2) require IEPs to include measurable annual goals that will meet the child's needs and enable the child to be involved with and make progress in the general education curriculum.

Federal regulations implementing the IDEA at 34 C.F.R. 300.320(a)(3) IEPs to include a description of how the child's progress toward meeting the annual goals will be measured and when periodic reports on the progress the child is making toward the annual goals will be provided to the parents.

Federal regulations implementing the IDEA at 34 C.F.R. 300.324(b)(1) require school districts to review and revise, if needed, a student's IEP periodically, but not less than annually. In addition, the LEA must reconvene a student's IEP team to address any lack of expected progress toward the annual goals and in the general education curriculum; to consider the results of any reevaluation; and to consider any information about the student provided by the parents.

Analysis: Findings of Fact

There have been three IEPs in effect while the student has attended Royal Valley Middle School. The first IEP was developed on February 8, 2022; the second IEP was developed on February 6, 2023; and the third was developed on January 31, 2024. The chart below lists the IEP goals and the special education services required by each of these documents:

Goals	February 8, 2022	February 6, 2023	January 31, 2024
Reading Goal	In 36 instructional weeks, when given a level 4 reading passage, the student will correctly answer 6/8 comprehension questions, two out of three trials. Evaluation Procedures: Qualitative Reading Inventory	In 36 instructional weeks, when given a 6" grade reading probe, the student will correctly answer 22/25 questions correctly two out of three trials. Evaluation Procedures: Reading Probe	By the end of the IEP year, when presented with 6th grade level reading passage the student will be able to answer comprehension questions 7/8 accuracy on 3 or 4 trials. Evaluation Procedures: CBM, classroom data and assessments, Qualitative Reading Inventory
Math Goal	In 36 instructional weeks, when given a 4th grade Math Assessment addressing multiplication, division, area, perimeter, and fractions, the student will correctly answer 33/48 questions, two out of three trials. Evaluation Procedures: Math Achievement Predictors Assessment	In 36 instructional weeks, when given a level 5 math probe, the student will answer at least 38/48 math computations correctly, in two out of three trials. Evaluation Procedures: Math Probe	By the end of the IEP year, when given a mixed math probe at the 6th grade level the student will score the 15" percentile or higher on 3 of 4 trials. Evaluation Procedures: easy CBM, classroom data and assessments

Goals	February 8, 2022	February 6, 2023	January 31, 2024
Functional Daily Living Goal	By the end of the annual IEP, when presented with social interactions/situations, using the super skills checklist, the student will be able to use fundamental skills (correct voice volume and tone, etc) social initiation skills (asking for help, starting/joining/ending a conversation, etc.), social response skills (listening, following directions, etc.), and getting along with others (being flexible, dealing with 'No", etc.) skills on 4 out of 5 observation periods (80%), two out of three trials. Evaluation Procedures: observations, super skills checklist	By the end of the annual IEP, when presented with social interactions/situations probe, the student will be able to use fundamental skills: (to understand and respecting self and others), social initiation skills: (asking for help, starting/joining/ending a conversation, etc.), social response skills (listening, following directions, etc.), and getting along with others (being flexible, dealing with 'No", etc.) skills on 4 out of 5 observation periods (80%), two out of three trials. Evaluation Procedures: observations, fundamental social interaction probe	By the end of the TEP year, when presented with social interactions/situations probe, the student will be able to use fundamental skills: (to understand and respecting self and others), social initiation skills: (asking for help, starting/joining/ending a conversation, etc.), social response skills (listening, following directions, etc.), skills on 3 out of 4, 15 minute observation periods (75%), Evaluation Procedures: Observation, data collection
Special Education Services	<u>6th grade</u> 240 minutes per week (mpw) for math 75 mpw for reading 75 mpw for functional daily living skills 650 mpw inclusion support <u>7th grade</u> 240 mpw for math 120 mpw for reading 120 mpw for functional daily living skills 750 mpw inclusion support	<u>7th grade</u> 240 mpw for math 120 mpw for reading 120 mpw for functional daily living skills 750 mpw inclusion support <u>8th grade</u> 240 mpw for math 120 mpw for reading 120 mpw for functional daily living skills 600 mpw inclusion support	<u>8th grade</u> 240 mpw for math 120 mpw for reading 120 mpw for functional daily living skills 600 mpw inclusion support <u>9th grade</u> 120 mpw for math 120 mpw for independent study 300 mpw inclusion support

The IEP developed on February 8, 2022 included the following parent concerns in the Present Level of Academic and Functional Performance:

Reading: The baseline, using the same assessment method, has regressed over the prior 12 months. At what time do we explore the potential of further pull-out instruction to ensure the student has the tools necessary to progress and meet his IEP goals. The IEP goal will have remained the same for 24 months. Parents understand the least-restrictive environment, but failing to progress and falling even further behind peers is not acceptable.

Math: Similar concerns with the baseline and goal remaining largely unchanged for what will be 24 months. Progress reports should show him progressing to reach his goal or we need to

be looking at additional accommodations or aids that will assist the student in moving his skills forward.

How these concerns will be addressed: We will look at pulling the student for reading, after seeing if the new strategies we are implementing work or not.

Documentation shows that the services for specialized instruction in reading were increased on the February 8, 2022 IEP as a result of parent concerns in regards to the student's lack of progress towards IEP goals for the 7th grade.

The Parent Concerns section of the February 6, 2023 IEP stated:

Parents are concerned about the student's organizational skills and keeping track of his assignments, otherwise, they have no other concerns other than what are already been addressed in the IEP.

A Prior Written Notice (PWN) for Identification, Special Education and Related Services, Educational Placement, Change in Services, Change of Placement, and/or Request for Consent dated February 6, 2023. The description of the action proposed states:

For the remainder of the 2022/23 school year, the student will have IRC [inter-related classroom] pull-out for math, reading, and functional daily living skills, and inclusion support for ELA [English Language Arts], science, and social studies. For the 2023/24 school year, the student will have IRC pull-out math, reading, and functional daily living skills, and inclusion support for ELA, science, and social studies until the end of his current IEP.

USD #337 explained the proposed action by stating:

The above services are being proposed as part of the student's educational plan due to his delays in his math and reading comprehension skills that significantly impact his ability to complete grade level assignments in the general education classroom. The student is currently performing more than three grade levels in math and reading comprehension below that of his peers. He needs direct, individualized instruction in the IRC room to remediate those delays. The team has determined that inclusion services are necessary for the student to be academically successful in the general education classroom due to his 3rd grade reading comprehension skills. The student exhibits significant weaknesses in the area of fundamental social skills. He needs direct and explicit instruction in social skills that are not part of the general education curriculum. He is not able to generalize the social skills he has learned when interacting with his peers.

The January 31, 2024 IEP indicated that the parents had no concerns other than what is being addressed in the IEP. The IEP continues to include one goal for reading, one goal for math, and one goal for functional daily living skills. School staff recommended increasing the goal for reading comprehension to the 7th grade level but it was continued at the 6th grade level per parents' request. School staff also recommended increasing the goal for math at the 6th grade

level; however, the math goal continued at level 5 at parent request. The Functional daily living skills goal no longer included the “getting along with others skills” (being flexible, dealing with No, etc.) and specified a 15-minute observation period but decreased the rate from 80% to 75% of the time.

A PWN dated January 31, 2024 describes the action proposed as follows:

It is being proposed, that for the remainder of the 2023-2024 school year, the student will receive services in the IRC classroom for math, reading/ELA, and functional skills. He will also receive inclusion services for science, history and ELA. For the 2024-2025 school year, the student will receive services in the IRC classroom for math and independent study skills. He will also receive inclusion services for English, science and electives.

Following the January 31, 2024 IEP team meeting, the parents shared the following concerns in an email to USD #337 staff on February 6, 2024 at 8:14 AM,

We had lengthy discussion on IEP goals and what was appropriate to reach within a 12 month period, especially since we have not achieved many goals over the prior two years. Reference was made by the Holton SpEd Coop. (Mrs. Ladusch) that goals are often set 'more like 18 months so that they are high-achieving goals. This goes directly against federal and state SpEd regulations that "Measurable Annual goals are descriptions of what a child can REASONABLY be expected to accomplish within a 12 month period with the provision of special education", and that any goal that is determined to not be reachable within the time period established should lead to an amended IEP to set goals that are achievable . . . There are documented results with progress reports that show a decline or retrograde in the student's progress towards his goals the prior IEP year. Despite this, the progress report still was indicative of 'Yes' when determining if he was making progress even in the final progress update which should show achievement of the goal, or else should be 'No' by default. Mrs. Ladusch appeared to agree that these should not have been stated as 'Yes' for progress; I believe this is essentially falsifying information to appear to be successful in implementing the IEP and is not acceptable . . . The parents would again reiterate our request for more information on the progress the student is making in math. We have made numerous requests for examples of work or progress reports from the online platforms being used as currently we only see “participation points” in PowerSchool for grades and the quarterly IEP progress report related to testing results. Parents cannot assist with any learning or progress when we have no idea of the concepts and work that are being taught.

As a result of this email and a meeting with the parents regarding the allegations in this complaint, USD #337 created a new PWN dated March 23, 2024. The actions proposed section states:

- a. *The team proposes that the student's progress towards his IEP goals continue to be shared with parents through the progress reports provided to them quarterly.*

- b. *The team proposes to change the <yes= to <no= on the progress report dated 10/13/2023 for the following goal: In 36 instructional weeks, when given a level 5 math probe, the student will answer at least 38/48 math computations correctly, in two out of three trials.*
- c. *The team proposes to change the <yes= to <no= on the progress reports dated 10/13/2023 and 12/20/2023 for the following goal: By the end of the annual IEP, when presented with social interactions/situations probe, the student will be able to use fundamental skills: (to understand and respecting self and others), social initiation skills: (asking for help, starting/joining/ending a conversation, etc.), social response skills (listening, following directions, etc.), and getting along with others (being flexible, dealing with "No", etc.) skills on 4 out of 5 observation periods (80%), two out of three trials.*

Conclusion

Federal regulations implementing the IDEA at 34 C.F.R. 300.324(b)(1) require school districts to review and revise, if needed, a student's IEP periodically, but not less than annually.

Documentation and interviews found the student's IEPs have been reviewed and revised annually during the past three school years.

Federal regulations at 34 C.F.R. 300.320(a)(3) IEPs require school district to include a description of how the child's progress toward meeting the annual IEP goals will be measured while federal regulations implementing the IDEA at 34 C.F.R. 300.324(b)(1) require school districts to reconvene a student's IEP team to address any lack of expected progress toward the annual goals and in the general education curriculum.

In this case, documentations shows that the math and reading goals were changed over the three IEPs by increasing the grade level of content as well as increasing the level of accuracy. It is noted that the evaluation procedures to gauge the student's progress were inconsistent across the IEPs and may have resulted in an inaccurate record of student progress and confusion as to whether the student was making adequate progress to achieve the goal. This was acknowledged by the district when it provided the parent with a PWN dated February 23, 2024 proposing to change the report of IEP goal progress for the math goal for one reporting period.

In addition, functional daily living skills were identified as a significant area of concern in the January 21, 2022 Evaluation Report, the Present Levels of Academic and Functional Performance in all three IEPs, and described in the February 6, 2023 PWN. Across the three IEPs, the goal for this area includes between three and four specific behaviors measured through observations and the IEP goal progress reports across the three IEPs do not address each of the specific behaviors being measured. Again, this may have resulted in an inaccurate record of student progress and confusion as to whether the student was making adequate progress to achieve the goal.

Again, this was acknowledged when USD #337 provided the parents with a PWN dated February 23, 2024 proposing to change the report IEP goal progress for the functional daily living skills goal on two consecutive reporting periods. Had the IEP goal progress reporting been more specific at the time of the two reporting periods of October 13, 2023 and December 20, 2023, the continued lack of progress across two reporting periods would have triggered the need to reconvene the IEP team to consider the student's lack of progress towards the functional daily living skills IEP goal.

Based on the foregoing, a finding of noncompliance *is substantiated* for USD #337 not including an adequate description of how the child's progress toward meeting the annual IEP goals will be measured and not reconvening the IEP team to address the lack of expected progress toward the annual goal.

Issue Two

USD #337, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to include the required members of the IEP team at the most recent annual IEP team meeting, specifically by not following appropriate procedures to excuse the LEA representative during the 2023-24 school year.

It is noted that USD #337 acknowledged noncompliance for this issue and proposed a resolution to the Kansas State Department of Education (KSDE). This proposed resolution was accepted by KSDE on April 3, 2024; therefore *no investigation or findings* will be included in this investigation report in regards to Issue Two.

Summary of Conclusions/Corrective Action

1. **ISSUE ONE**: A violation of federal regulations at 34 C.F.R. 300.320(a)(3) is substantiated because the USD #337 failed to include an adequate description of how the child's progress toward meeting the annual IEP goals would be measured. In addition, a violation of federal regulations at 34 C.F.R. 300.324(b)(1) is substantiated because USD #337 failed to reconvene a student's IEP team to address the lack of expected progress toward the functional daily living skills goal across two consecutive IEP goal reporting periods in December 2023.
 - a. CORRECTIVE ACTION:
 - i. USD #337 shall submit a written statement of assurance to Special Education and Title Services (SETS) stating that it will ensure that each annual IEP goal shall include an adequate description of how the child's progress towards meeting each annual goal will be measured.
 1. No later than May 1, 2024
 - ii. USD #337 shall submit a written statement of assurance to Special Education and Title Services (SETS) stating that it will ensure that IEP

teams will be reconvened to address any lack of expected progress toward annual goals based on IEP goal progress reports.

1. No later than May 1, 2024
- iii. USD #337 will provide training to special education staff specifically addressing the requirement for IEP teams to be reconvened to address any lack of expected progress toward annual goals based on IEP goal progress reports. This training will also provide guidance for writing measureable goals. USD #337 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.
 1. No later than May 30, 2024

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)