

KANSAS STATE DEPARTMENT OF EDUCATION
SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT
FILED AGAINST
UNIFIED SCHOOL DISTRICT #229
ON FEBRUARY 23, 2024

DATE OF REPORT MARCH 7, 2024

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 complainant” or “the parent”.

The complaint is against USD #229 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 February 23, 2024, and the 30-day timeline ends on March 24, 2024.

Evidence Reviewed

During the investigation, the Complaint Investigators, Ashley Niedzwiecki reviewed all evidence and documentation, which was provided by both the district and the complainant(s). The following documentation and information were used in consideration of the issue(s):

1. Student’s current IEP.
2. Notes from IEP meetings dated January 19, 2023, February 16, 2023, April 20, 2023, and October 26, 2023.
3. Email dated October 24, 2023.
4. IEP Progress Report dated 10/13/2023.
5. List of words used to monitor student’s reading and spelling goals.
6. Interview with the parent on 3/4/2024.
7. Interview with Dr. Mark Schmidt, Assistant Superintendent of Special Education on 3/5/2024.

Background Information

The student is an elementary aged student, in attendance at USD #229. The student has been identified as a student with an exceptionality.

Issues Investigated

Issue One

Whether USD #229, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide a Prior Written Notice following a change in methodology related to the student's Goal 1 and Goal 3.

Applicable Law

Under federal and state law, a Prior Written Notice (PWN) is required to be sent to parents when certain proposed special education actions occur. A PWN must be sent to parents whenever an agency, proposes to initiate or change; or refuses to initiate or change, the identification, evaluation, or educational placement of the child or the provision of a free and appropriate public education to the child. (K.S.A. 72-3430(b)(2)(A)-(B); 34 C.F.R. 300.503(a)(2)).

If it is determined that a child needs specialized instruction, the IEP team must develop an IEP, including measurable annual goals. (K.S.A. 72-3429(c)(2)). The IEP must include a description of how the child's progress toward meeting those annual goals will be measured. (K.S.A. 72-3429(c)(3)). Annual goals are the methods used to measure the progress made by the provision of services and may be changed or removed without parental consent but would require a PWN.

Federal regulations require an IEP to include "a statement of the special education, related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child." 34 CFR 300.320 (a)(4). This does not, however, mean the IEP must identify the specific methodology that a district will use. The U.S. Department of Education has stated that "there is nothing in the [IDEA] that requires an IEP to include specific instructional methodologies." 71 Fed. Reg. 46,665 (2006); *Endrew F. v. Douglas County Sch. Dist. RE-1*, 69 IDELR 174 (U.S. 2017) (holding that an IEP is substantively appropriate if it is reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances).

Further, courts have found that although districts are required to provide prior written notice before instituting a change in placement, such notice is not required when a district exercises its discretion to select a particular educational methodology. (*Dearborn Pub. Schs.*, 115 LRP 23739 (SEA MI 03/25/15)). According to the Kansas Process Handbook, instructional methodology may be changed without parental consent, and without the need for a PWN, unless the instructional methodology is specified in the student's IEP. (See *Kansas Process Handbook*, pg. 10).

Findings of Fact

According to the complainant, the student dropped in progress on Goal 1 from 100% to 40% and from 93% accuracy to 80% accuracy on Goal 3 following ESY 2023. The parent claims that this drop in progress was the result of changing the methodology used to instruct the student at the beginning of the 2023-2024 school year. The parent argues this change in methodology required the district to send a Prior Written Notice (PWN).

The parent states that he expressed his concerns about the student's drop in progress prior to an IEP meeting held October 26, 2023. The district acknowledged this in an email written to the parent on October 24, 2023. In that email, the district outlines topics for discussion at the upcoming October 26, 2023, meeting. Topics to discuss included how the student was being assessed on reading and writing goals and the percentage decrease for those goals. Notes from the IEP meeting confirm the district clarified "the differences between real and nonsense words and how these are used in assessment/instruction." The parent confirms the district explained the assessment process, however, claims the district failed to specifically mention that the method of instruction would change to a mixed format.

To address the parent's concerns, both the district and the parent agree that during the October 26, 2023, meeting, the district explained how some regression was typical when a student learns to integrate new skills. However, the parent states that he was not satisfied with this explanation. According to the district, at that time, and based on what the student was demonstrating during progress monitoring, it was appropriate for the teacher to make instructional adjustments to a mixed syllable format. While the district acknowledges that a change in instructional methodology was not explicitly discussed, the importance of challenging the student to integrate skills and generalize skill sets to allow for the student to gain greater literacy competency was discussed at length. This is evidenced by the IEP meeting notes provided by the district.

In review of the student's current IEP, the goals are stated as follows:

Goal 1 – Category: Writing

By April 2024, when writing, [the student] will use encoding skills by saying the word, tap the word phoneme by phoneme to accurately spell the word on 4/5 opportunities with 80% accuracy.

Goal 3 – Category:

By April 2024, when given a list of words with closed syllable consonant combinations, silent E and open syllable, soft c, g, s, tch, dge, vowel team syllables, and vowel R syllables [the student] will read the words on 4/5 opportunities with 95% accuracy.

In this case, the IEP does not specify any instructional methodology required to be used to achieve these goals, nor is there any indication as to the type of assessment required to

monitor the student's progress. The goals do, however, contain all four components of a well-written goal, namely: timeframe, condition, behavior, and criterion.

Additionally, while a drop in progress can be alarming for a parent to see, it can also be an indication to the district that the method of instruction needs to be altered. In this case, the district confirmed that based on the student's progress, the district changed the method of instruction, but not the student's goals. As stated by the district, progress monitoring is a "snippet" of what the student understands. Based on that monitoring, the district has a responsibility to "lay the groundwork for bigger things to come which is why we generalize skills and builds on skills." Here, the district changed the instructional methodology to a mixed format. Outside of this discretionary change, the district and the parent agree that nothing was modified in the student's IEP following the October 26, 2023, IEP team meeting.

Conclusion

A district is required to provide a parent a PWN whenever the district proposes to initiate or change; or refuses to initiate or change, the identification, evaluation, or educational placement of the child or the provision of a free and appropriate public education to the child. (K.S.A. 72-3430(b)(2)(A)-(B); 34 C.F.R. 300.503(a)(2)). In this case, the district changed the instructional methodology provided to the student, not the identification, evaluation, placement, or provision of services offered to the student. As stated previously, a district may change the instructional methodology without parent consent, and in some cases without needing to issue a PWN. A PWN, notifying the parent of a change in instruction would be required if the instructional methodology was listed in the student's IEP. However, if instructional methodology is not listed in the IEP, the district may change instruction methods without parent consent and without the requirement of a PWN.

Therefore, based on the foregoing, a violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), specifically that the district failed to provide the parent with a Prior Written Notice following a change in methodology *is not substantiated*.

Summary of Conclusions/Corrective Action

1. **ISSUE ONE**: A violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), by failing to provide a Prior Written Notice following a change in methodology related to the student's Goal 1 and Goal 3 *is not substantiated*.
 - a. No corrective action required.

Investigator

Ashley Niedzwiecki

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)