

KANSAS STATE DEPARTMENT OF EDUCATION
SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT
FILED AGAINST
UNIFIED SCHOOL DISTRICT # 260
ON AUGUST 28, 2023

DATE OF REPORT SEPTEMBER 29, 2023

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 ----- will be referred to as "the complainants" or "the parent(s)."

The complaint is against USD 260. In the remainder of the report, USD 260 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 on which it was filed. A complaint is considered filed on the date on which it was received by KSDE. In this case, the KSDE initially received the complaint on August 28, 2023, and the 30-day timeline ends on September 29, 2023.

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

1. Psychological Evaluation for student from JKC Psych with Dates of Assessment June 22, 2021, June 30, 2021, and July 16, 2021.
2. Individualized Education Program dated April 29, 2022
3. 2022-2023 School District Calendar
4. Prior Written Notice for Evaluation or Reevaluation and Request for Consent dated August 29, 2022
5. Individualized Education Program dated October 4, 2022
6. Prior Written Notice dated October 4, 2022
7. Individualized Education Program Clerical Correction dated October 4, 2022
8. Evaluation/Eligibility Team Report dated October 4, 2022
9. Individualized Education Program Amendment Form for Minor Changes Not Requiring a Full IEP Team Meeting dated May 11, 2023
10. Team Meeting Notes dated May 11, 2023
11. Prior Written Notice dated May 11, 2023

12. Individualized Education Program Clerical Correction dated May 11, 2023
13. Emails among School Principal and IEP Team dated May 18, 2023 at 4:58 PM through May 22, 2023 at 1:54 PM
14. Progress Report for 2022-2023 dated October 7, 2022; December 4, 2022; March 3, 2023, and May 15, 2023
15. Social Work Progress Notes dated August 30, 2022 and May 9, 2023
16. Fifth Grade schedule 2022-2023
17. Social Work Schedule 2022-2023
18. Speech Schedule 2022-2023
19. Student Grades for 2022-2023
20. Student Attendance for 2022-2023 dated August 17, 2022 - September 5, 2023
21. District response dated September 14, 2023

Background Information

The Student is enrolled in USD 260 and during the 2022-2023 school year was a fifth grader at an elementary school. His eligibility categories during his reevaluation in October 2023 for special education and related services are Other Health Impairment (primary) and Autism (secondary). He receives speech and language and social work as related services. An additional outside evaluation provided by the parents reported Autism, Specific Learning Disability with impairment in reading, Specific Learning Disability with impairment in written expression, Specific Learning Disability with impairment in math, and ADHD and these disability categories are included in his May 11, 2023 IEP. The student received most of his reading, mathematics and writing instruction in a special education resource setting and science/social studies and specials in the general education classroom with para support during fifth grade. His reading and mathematics instruction included both focused remediation instruction (strategies) and modified grade level content instruction (core). His IEP included a number of accommodations for learning and test performance. His speech and language and social work services were provided during the mathematics or reading core or strategies instruction according to his special education teacher. Some behavior concerns were reported, and two discipline referrals were made, but none of the IEPs indicated a need for a Behavior Interview Plan.

Issues Investigated

1. **ISSUE ONE:** USD #260, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), during revision of the IEP failed to consider information provided by the parent, specifically information contained in the IEE dated between June 22, 2021 and July 16, 2021 regarding placement and functional programming during the 2022-2023 school year.

2. **ISSUE TWO:** USD #260, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to follow the student's IEP during the past twelve months, specifically, provision of service minutes, services in the appropriate setting, and identified accommodations during the 2022-2023 school year.
3. **ISSUE THREE:** USD #260, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to appropriately respond to a parent request for an accommodation for separate passing periods to avoid conflict when the student is in unstructured environments during the 2022-2023 school year.

Issue One

USD #260, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), during revision of the IEP failed to consider information provided by the parent, specifically information contained in the IEE dated between June 22, 2021 and July 16, 2021 regarding placement and functional programming during the 2022-2023 school year.

Applicable Law

Federal regulations at 34 at C.F.R 300.502(c)(1) Parent-initiated evaluations states, if the parent obtains an independent educational evaluation at public expense or shares with the public agency an evaluation obtained at private expense, the results of the evaluation must be considered by the public agency, if it meets agency criteria, in any decision made with respect to the provision of FAPE to the child.

Kansas state regulations at K.A.R. 91-40-12(2)(e) Right to independent educational evaluation states, If the parent obtains an independent educational evaluation at public expense or provides the agency with an evaluation obtained at private expense, the results of the evaluation shall be considered by the agency, if it meets agency criteria, in any decision made with respect to the provision of FAPE to the child. The results of this evaluation may be presented as evidence at a due process hearing regarding that child.

Analysis: Findings of Fact

The Parents alleged that they privately paid for an outside Independent Education Evaluation (IEE) from JKC Psych with Dates of Assessment June 22, 2021, June 30, 2021, and July 16, 2021 and the district is disregarding the information contained in this report in planning the student's IEP. They stated it is the most accurate description of their student educationally. The academics the school are teaching to the Student are too advanced for his cognitive ability and the school suggest that he be in a high level functional classroom when he is really functioning at a kindergarten level in problem solving, reasoning, reading fluency, and comprehension. He

does not understand the content even with para support. The student would most benefit from a more contained classroom with supports as recommended in the report they provided.

The District responded that they did consider the outside evaluation as required by regulation. They considered the testing, findings, and recommendations. They stated they agreed with some of the recommendations but disagreed with others.

The IEP dated April 29, 2022 (in effect at the start of the 2022-2023 school year) included the diagnoses reported from the outside evaluation report as well as findings from the report included in the present levels.

The IEP dated October 4, 2022 again referenced the outside evaluation for the findings and in the present levels.

The reevaluation report dated October 4, 2022 referenced the outside evaluation report regarding the testing results, diagnoses, and recommendations.

The May 11, 2023 team meeting notes recorded that the IEP team considered the report recommendation that the student be educated in a categorical classroom with functional programming. It is written, "...[Student] does not meet the qualifications for a functional classroom. Said that [Student] could have functional support without being in a functional classroom."

Conclusion

It is found that the district considered the outside evaluation report provided by the family. Based on the foregoing, it is not substantiated that USD 260 failed to consider information provided by the parent, specifically information contained in the IEE dated between June 22, 2021 and July 16, 2021 regarding placement and functional programming during the 2022-2023 school year.

Issue Two

USD #260, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to follow the student's IEP during the past twelve months, specifically, provision of service minutes, services in the appropriate setting, and identified accommodations 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.

Kansas State regulations at K.A.R. 91-40-16(b)(2) requires 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 family alleged that the Student received instruction for science and history in the 5th grade classroom, but he does not understand the content even with para support. They stated he should be in a functional classroom to be able to understand academic content presented to him. He has been in Curriculum Modified classrooms since kindergarten and his special education minutes have continued to increase. The school district still believes he still should be in general education classes even though he cannot read/write or comprehend above a kindergarten level.

The district responded that they provided the services as outlined in the IEPs in effect during the 2022-2023 school year.

Special Education Services

The IEPs dated April 29, 2022 included 90 minutes of special education services in the 5th grade classroom for reading (30 minutes), mathematics (30 minutes), and social studies/science (30 minutes) five days every week along with 240 minutes of special education services in the special education classroom for reading (120 minutes), mathematics (90 minutes), and writing 30 minutes five days every week.

The October 4, 2022 IEP increased special education services in the special education classroom. The services included 30 minutes of special education services in the 5th grade classroom for social studies/science and five days every week along with special education services in the special education classroom for reading (120 minutes), mathematics (90 minutes), and writing 30 minutes five days every week.

The 5th grade schedule document showed that the student received science/social studies instruction from 11:10 – 12:10 (60 minutes) in the 5th grade classroom with special education support. The special education teacher during interview described that a para was in the classroom to assist each.

The 5th grade schedule document showed that the student received 90 minutes of daily reading instruction from 9:20 – 10:20 and again from 2:45 – 3:15 in the special education classroom with special education support. The special education teacher reported that the final 30 minutes of reading instruction occurred during social studies/science. The 5th grade schedule document showed that the student received 90 minutes of daily math instruction from 10:25 – 10:55 and again from 12:55-1:55 in the special education classroom with special education support. Finally, the 5th grade schedule document showed that the student received 30 minutes of daily writing instruction from 2:15 – 2:45 in the special education

classroom with special education support. The special education teacher during interview described that core instruction time was modified grade level content and the strategies instruction time was for focused skill remediation.

Related Services

Speech. The IEP dated April 29, 2022 in effect at the start of the 2022-2023 school year beginning on August 17, 2022 – October 3, 2022 included 20 minutes of speech service two times per week in the special education room. The October 4, 2022 IEP included 20 minutes of speech service one time per week in the special education room. The Speech Schedule 2022-2023 document showed that the student was scheduled with the District's SLP on Tuesday mornings at 9:20 – 9:40 AM during the reading core in the special education room. The 5th grade schedule document showed that the student had his Reading Core from 9:20-10:20 AM.

Social Work. The IEP dated April 29, 2022 in effect August 17, 2022 – October 3, 2022 included 20 minutes of social work service one time per week. The Social Work Progress Notes documents showed that the social worker scheduled the Student as part of a group on Tuesdays beginning August 30, 2022 – September 27, 2022 (through end of current IEP). The October 4, 2022 and May 11, 2023 IEPs included 20 minutes of social work service two times per week. The Social Work Progress Notes documents showed that the social worker increased the Student for 20 minutes to twice a week beginning on October 17, 2022 – May 9, 2023. The social worker reported he left class first thing in the morning during social emotional time before any core instruction occurred.

Accommodations. The April 29, 2022 IEP showed nine accommodations and the October 4, 2022 and May 11, 2023 IEPs showed eleven accommodations. The special education teacher described how the accommodations were used in the classroom, how she trained the paraeducators and how she met with the general education teachers for social studies and science to ensure the accommodations were used. The social studies and science teachers received copies of the student's IEPs.

Conclusion

Based on the foregoing, it is not substantiated that USD 260 failed to follow the student's IEP during the 2022-2023 school year.

Issue Three

USD #260, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to appropriately respond to a parent request for an accommodation for separate passing periods to avoid conflict when the student is in unstructured environments during the 2022-2023 school year.

Applicable Law

Federal regulations at 34 CFR 300.503(a)(1) and 300.503(a)(2) regarding Prior notice by the public agency states (a) Notice. Written notice that meets the requirements of paragraph (b) of this section must be given to the parents of a child with a disability a reasonable time before the public agency (1) Proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child; (2) Refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child.

According to state regulations at K.S.A 72-3430(b)(2) a procedural safeguard afforded to parents is the Prior Written Notice for certain proposed special education actions. The Prior Written Notice documents a description of the action proposed or refused by the district. It is required when the district proposes to initiate or change or refuses to initiate or change the identification, evaluation, placement, or provision of FAPE to a child. This requirement is triggered regardless of whether it is the school or the parent who is initiating the request.

Analysis: Findings of Fact

The complainants alleged that the student should have separate passing periods to avoid conflict. They report previous experiences of altercations or confrontations when he is in an unstructured environment. The district responded that the parent's request for a separate passing period was deemed inappropriate during the 2022-2023 school year as the elementary school does not have passing periods. The IEP team discussed alternate passing periods as a possible accommodation for the following (2023-2024 school year when the student enters middle school but as there was nothing added as the district noted the student had no behavior to indicate the accommodation was needed at present.

The May 11, 2023 team notes documented: "Discussed alternate passing schedule. Mom asked if the classes are close together. Concerned that he will not be able to find his class. [School psychologist] said most classes are right by the 6th grade hallway."

No mention of the accommodation for separate passing periods is made in either the May 11, 2023 Amended IEP nor the May 11, 2023 Prior Written Notice.

KAR 91-40-1(z) defines FAPE as the special education and related services. This accommodation, discussed at the May 11, 2023 IEP meeting, qualified as a related service that required a PWN. Whether or not the provision of special education or related service discussed is Physical Therapy or the accommodation of alternate passing period it would fall under a discussion of "other developmental, corrective or supportive services (KAR 91-40-1(1)(X)).

It is noted that the parent's complaint was that the accommodation was not added to the IEP during the May 11, 2023 IEP transition meeting and it was reported by the school psychologist that the accommodation will be added to the IEP at the next annual IEP.

Conclusion

In this case it was found that the accommodation request for alternate passing period discussed at an IEP meeting as recorded in the May 11, 2023 team meeting minutes would qualify as a related services and require either acceptance or rejection in the Prior Written Notice. Based on the foregoing, it is substantiated that USD 260 failed to appropriately respond to a parent request for an accommodation for separate passing periods to avoid conflict when the student is in unstructured environments during the 2022-2023 school year.

Summary of Conclusions/Corrective Action

1. **ISSUE ONE:** A violation of 34 at C.F.R 300.502(c)(1) and K.A.R. 91-40-12(2)(e) was not found, based on review of October 4, 2023 Reevaluation Report, May 11, 2023 IEP team meeting notes. Corrective action is not required.
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 IEP services, interview with district staff and documentation of services. Corrective action is not required.
3. **ISSUE THREE:** A violation of Federal regulations at 34 CFR 300.503(a)(2) and K.S.A 72-3430(b)(2) was found, based on finding that the IEP team decision to reject the accommodation for an alternative passing period should have been recorded on a Prior Written Notice. Corrective action is required (as follows):
 - a. **CORRECTIVE ACTION:**
 - i. 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 CFR 300.503(a)(2) and State regulations at K.S.A 72-3430(b)(2) by ensuring that Prior Written Notices are written to ensure parents are always well informed about whatever action the district intends to take (or intends not to take) on behalf of their child.
 - ii. Date due: October 20, 2023

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)