

KANSAS STATE DEPARTMENT OF EDUCATION
SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT
FILED AGAINST
UNIFIED SCHOOL DISTRICT #500
ON OCTOBER 3, 2023

DATE OF REPORT NOVEMBER 3, 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" or "the mother."

The complaint is against USD #500, Kansas City, Kansas School District. In the remainder of the report, USD #500 will be referred to as "the district".

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 3, 2023 and the 30-day timeline ends on November 3, 2023. The Complaint Investigator requested and was granted a one week extension to November 10, 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. Dr. Wickham exchanged emails with Dr. Lawrie, Director of Special Education with USD #500 to clarify evidence and answer questions about the investigation. Dr. Wickham interviewed the parent on November 1, 2023. The following documentation and information were used in consideration of the issues:

1. Waiver for 3 year evaluation, dated and signed by the parent September 23, 2021
2. Individualized Education Program, dated September 23, 2022
3. IEP Meeting Notes and Summary, dated September 23, 2022
4. Guardianship appointment dated December 7, 2022
5. IEP Meeting Notes and Summary, dated May 10, 2023
6. Notice of Meeting, dated August 11, 2023
7. Prior Written Notice for Identification, Initial Services, Placement, Change in Services, Change of Placement, and Request for Consent, dated September 18, 2023
8. Individualized Education Program, dated September 18, 2023
9. IEP Meeting Notes and Summary, dated September 18, 2023
10. Prior Written Notice for Identification, Initial Services, Placement, Change in Services, Change of Placement, and Request for Consent, September 18, 2023

11. Unified School District #500 Response to Formal Complaint 24FC500-003, dated October 5, 2023, updated October 31, 2023
12. IEP Meeting Notes and Summary, dated October 9, 2023
13. Email from parent to special education teacher dated October 13, 2023 at 5:04 PM
14. Email from parent to KSDE staff to forward to the Complaint Investigator dated October 13, 2023 at 5:22 PM
15. Email between the Complaint Investigator and Director of Special Education dated November 2, 2023 between 8:09 AM and 2:35 PM
16. Student Schedule School Year: 2023-2024
17. Job Performance Rating Scale – Vocational activities daily data collection document, undated

Background Information

The student met graduation requirements at the conclusion of the 2022-2023 school year continues to receive special education and related services beyond his high school graduation as determined by his IEP team. He attends his local high school in his district and his current placement continues to be in a Succeeding in Academics and Independent Living Skills (SAILS) classroom program. This classroom is designed to promote independence with both functional academic skills and independent activities of daily living and uses evidence-based instructional strategies to teach skills that are necessary to live beyond the classroom.

The student is eligible to receive special education services with a primary disability of Autism Spectrum Disorder and a secondary disability of Speech and Language according to the evaluation on September 23, 2021. The parent waived reevaluation on September 23, 2021.

During the 2022-2023 school year the complainant began requesting increased community-based instruction and vocational work experiences. The IEP team has met two times this school year to revise the IEP however, there has not been agreement on the proposed IEP dated September 18, 2023. The proposed IEP included material changes in services and the parent did not sign the PWN so the district states the IEP dated September 23, 2022 remains the IEP in effect for the student.

Issues Investigated

1. **ISSUE ONE:** USD #500, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to consider the Parent request for the Student to receive instruction in the community, functional activities such as vacuuming and using a blender and transition activities during May 2023 IEP and any IEPs during the 2023-2024 school year.
2. **ISSUE TWO:** USD #500, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to respond to a parent request

for an Independent Educational Evaluation and for outside technical assistance during the last 12 months.

3. **ISSUE THREE:** USD #500, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to implement the transition services of the Student's IEP during the 2023-2024 school year.
4. **ISSUE FOUR:** USD #500, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), incorrectly contacted an outside agency without the consent of the Student's guardian during the 2023-2024 school year.

Issue One

USD #500, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to consider the Parent request for the Student to receive instruction in the community, functional activities such as vacuuming and using a blender and transition activities during May 2023 IEP and any IEPs during the 2023-2024 school year.

Applicable Law

Federal regulations at 300.322(b)(2)(i)(A) and State regulations at K.A.R. 91-40-17(3), IEP meetings and participants states a purpose of the meeting will be to consider the postsecondary goals and needed transition services for the student.

Analysis: Findings of Fact

The Parent alleged that during the May 2023 IEP meeting she stated she wanted her student to receive instruction in the community and work on independent living skills as he moved to transition services. She expressed concern that he was not going to a district transition program, but instead remaining in his current classroom placement the next school year. She alleged that she was told that community instruction was not something put into IEPs and the Special Education Director would need to be contacted and that these decisions would be put into an IEP at the beginning of the 2023-2024 school year.

At the September 18, 2023 IEP meeting the Parent alleged that again she was told that "we cannot give duration, dates, or times in the IEP for community activities, because we are at the mercy of services and resources. We may not have a bus or para available." The later October 9, 2023 IEP meeting was attended by the Director of Special Education and the parent alleged that while community instruction was added it was made clear that these services may occur in the community or in the classroom.

The district responded that the parent concerns and requests were recorded in the May 2023 IEP meeting notes, however it was determined the IEP would be updated at the beginning of the 23-24 school year to address these concerns/requests. The Notice of Meeting for this

meeting was sent in August 2023 and the IEP team met on September 18, 2023 and October 9, 2023 to review and discuss the proposed September 18, 2023 annual IEP. The district responded that the parent input was considered and discussed, however the parent has not signed the Prior Written Notice to implement the proposed September 18, 2023 IEP so the September 23, 2022 IEP is still in effect.

The May 10, 2023 IEP team meeting notes reported the following:

- “Mom discussed activities in the community/daily living that [Student] is currently doing.”
- “Mom noted that her goal for [Student] would be to have increased community involvement, either through employment or volunteer opportunities”
- “The team discussed ensuring that [Student] has more access to community outings in the post-secondary setting”
- “The team discussed the rationale for [Student] remaining in the SAILS I setting vs a separate post-secondary program; however there will be opportunities for [Student] to participate in the community.”
- “The plan moving forward will be to have an IEP meeting at the beginning of the 2023-24 (between 8/28 & 9/1) school year to have the new IEP drafted that more accurately reflects a student in the post-secondary program.”

The proposed September 18, 2023 IEP included 1630 minutes weekly and 270 minutes one day every week of Special Education Services (Adaptive) Special Ed Direct Services outside Regular Ed Classrooms, / programs / other locations and 120 minutes of Vocational Special Education (Community Based Instruction (CBI) services in the school setting and/or community setting) Special Ed Direct Services outside Regular Ed Classrooms, / programs/ other locations. The Regular Education Participation section states, “[Student] has completed required course of study needed for graduation with a functional curriculum, but needs intensive supports in the area of transition to support post-secondary goals. Therefore the student is enrolled in a transition program with a curriculum that addresses functional academics, communication, and social skills.”

The September 18, 2023 Annual IEP team meeting minutes recorded related service providers (communication, occupational therapy, and adaptive physical education) presenting proposals for service minutes followed by a review of the proposed IEP goals. The meeting minutes then record the advocate speaking on behalf of the mother to state that the proposed IEP “does not incorporate parent concerns” and stated that the student needs to go in the community and receive job training.

Prior Written Notice dated September 18, 2023 proposed adding Community Based Instruction services for 120 minutes weekly in the school setting and/or community setting for the student to gain greater access to skills needed to transition to the community. The mother does not sign the Prior Written Notice dated September 18, 2023 to provide consent for the

material change in services, so the IEP dated September 23, 2023 remained in effect. A continuation IEP meeting was scheduled for October 9, 2023. The mother stated that the 120 minutes of community based instruction services are not coded as a service occurring in the community and the statement of services states that they may be provided in the community or in the classroom.

The October 9, 2023 IEP team meeting notes included the following:

- "Mom wants service minutes in the IEP that are in the "C" Community setting"
- "The [Director of Special Education] says (sic) "CBI is a part of the post-secondary curriculum" [Director of Special Education] explains CBI does not have to be directly in the community"
- "Mom wants to know why [student] is not in the community "
- "[Director of Special Education] expresses that we do not need to put "Community" minutes into the IEP"
- "[Director of Special Education] say we cannot write in the IEP that we take [Student] into the community for CBI, but rather the (sic) CBI will be provided in the school or community setting on any given day / week"
- "[Advocate] states mom has no guarantee [Student] goes into the community. 'How will we know minutes will be in the community setting"
- "[Director of Special Education] expresses that CBI can be provided in the school or community settings"

Conclusion

There were three IEP meetings held between May 2023 and October 2023 in response to the parent's request for community based and vocational instruction. Minutes from each of the meetings show the discussion/consideration of community based and vocational instruction. The district provided a PWN following the September 18, 2023 IEP meeting responding to the parent request for community based and vocational instruction by offering services for community-based and vocational instruction. The parent did not feel that the offer of services was appropriate nor individualized for her student and therefore declined to sign the PWN. The meeting minutes from October 9, 2023 IEP meeting show that the district did not change its offer of services so no new PWN was provided. Based on the foregoing, it *is not substantiated* that USD #500 failed to consider the parent request for the student to receive instruction in the community, functional activities such as vacuuming and using a blender and transition activities during May 2023 IEP and any IEPs during the 2023-2024 school year.

Issue Two

USD #500, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to respond to a parent request for an Independent Educational Evaluation and for outside technical assistance during the last 12 months.

Applicable Law

Federal regulations at 34 C.F.R. 300.504(c)(1) state that the parents of exceptional children shall have the right to...obtain an independent educational evaluation of the child. Further, 34 C.F.R. 300.502(b)(1) and K.A.R. 91-40-12, Right to independent educational evaluation states that subject to the conditions specified in this regulation, the parent of an exceptional child shall have the right to request an independent educational evaluation at public expense if the parent disagrees with the evaluation obtained by the agency.

Federal law at 34 C.F.R. 300.119. Technical assistance and training activities. Each SEA shall carry out activities to ensure that teachers and administrators in all public agencies-- (a) Are fully informed about their responsibilities for implementing Sec. 300.550; and (b) Are provided with technical assistance and training necessary to assist them in this effort.

Analysis: Findings of Fact

As part of the Child Complaint dated October 3, 2023 the parent requested an Independent Educational Evaluation (IEE) be done at district expense and that the district bring TASN in to provide technical assistance and training for the school after observing the student. The parent alleged in the Child Complaint filed with the state that she is concerned with the results of the transition assessment and does not agree with the results. She alleged that the assessment used is designed to be used with students with significant support needs and the results weren't productive and that the student would fail in all areas. During the assessment only an hour was spent visiting with the school team and no Direct Observation or Home Study was conducted.

The district responded that the district did not receive a request for Independent Education Evaluation or a request for technical assistance during the last 12 months. The district further reported that they have procedures in place that if this was requested, this request would have been sent directly to the Director of SPED and information regarding IEE would have been sent to the parent at the district cost. The district has no documentation of technical assistance requests, nor does the district know why this would have been requested.

The findings of Issue One are incorporated herein by reference.

Review of the documentation showed that the parent waived a reevaluation for the student on September 23, 2021.

At the May 10, 2023 IEP meeting the meeting minutes recorded the advocate requested that the district “utilize the T-TAP (sic), not only to update the transition assessment, but to update other areas of the IEP (present levels, strengths, post-secondary goals, etc.) as well.”

According to the September 18, 2023 IEP team meeting minutes the “Advocate requested the TTAP assessment”. The meeting minutes further recorded that the transition teacher responded, that “the TTAP assessment is not well suited for [student], but we (sic) can revisit it as the school year progresses.”

The proposed IEP dated September 18, 2023 listed the following assessments used in the Transition Assessment: Personal Preference Indicators (PPI) (discussed during the September 18, 2023 IEP meeting); A Guide for Planning (no date of administration provided); Group Interview with Teacher and Staff using the PPI (no date of administration provided); the TEACCH Transition Assessment Profile (TTAP) conducted by parent interview administered on September 28, 2023.

During an interview with the parent on November 1, 2023 the parent stated she did not make these requests of the district this school year. The Complaint Investigator explained to the parent that these requests need to first be made to the district.

Conclusion

In this case it is found that the parent did not make the request for an independent educational evaluation, nor request for outside technical assistance to the district, but instead requested it as a remedy as part of the Child Complaint filed on October 3, 2023. There are no documents found that the request was made in writing. The district reported they received no request and the parent stated she did not make the request to the district. Therefore, based on the foregoing, it *is not substantiated* that USD #500 failed to respond to a parent request for an Independent Educational Evaluation and for outside technical assistance during the last 12 months.

Issue Three

USD #500, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to implement the transition services of the Student’s IEP during the 2023-2024 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 alleged that transition services have not been a part of the student's IEP and that the student's case manager said transition services have never been a part of the student's IEP. She stated she recently learned that they could have started when he was 16 years old and would like compensatory education for those lost years.

The district responded that starting on page 10 of the student's IEP dated September 23, 2022 is the student's transition section. They additionally responded that the proposed IEP also has a transition section that meets IDEA regulations and the services in the proposed IEP were written to fulfill the goals of the transition plan.

The findings of Issues One and Two are incorporated herein by reference.

During an interview with the mother on November 1, 2023 the mother clarified that by alleging the district was not implementing transition services she meant that the student should have been receiving transition services since 16. The Complaint Investigator explained that the investigation has a one-year limit for investigation.

The May 10, 2023 IEP meeting notes reported, "Mom noted that the transition services section of the IEP was missing key information; the team will update in this meeting"

The IEP in effect dated September 23, 2022 includes a transition plan with sections including: 1) Post secondary goals for (a) post-secondary employment (Following High School Graduation I will receive vocational training support); (b) vocational (Following High School Graduation I will receive assistance in a supported vocational setting); and (c) living (Following High School Graduation I will live at home for (sic) support in independent living needs). 2) course of study, and 3) needed transition services for OT, PT and APE. The following transition services were marked, N/A, 1) Acquisition of Daily Living Skills, 2) Community, 3) Development of Employment and Other Post-Secondary Adult Living, 4) Functional Vocational Evaluation, and 5) Instruction, , No outside agencies were indicated nor invited to the IEP while the student was a senior in high school.

Conclusion

While the student's transition plan includes the required components the services in the IEP in effect are minimally directed to the student's post-secondary goals and not likely to result in meeting the post-secondary goals identified in the student's IEP. Additionally, the IEP in effect minimally involved outside agencies. Based on the foregoing, it *is not substantiated* that USD #500 failed to implement the transition services of the Student's IEP during the 2023-2024 school year.

Issue Four

USD #500, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), incorrectly contacted an outside agency without the consent of the Student's guardian during the 2023-2024 school year.

Applicable Law

Federal regulations at 34 C.F.R. 300.321(b)(3) and State regulations at K.A.R. 91-40-17(g) state parents, or a student who is 18 years of age, must provide consent for the school to invite any outside agency to the IEP meeting. Consent from the parent (or adult student) is required when inviting outside agencies to ensure the protection of confidentiality of information under FERPA (Federal Register, August 14, 2006, p. 46672).

Analysis: Findings of Fact

The findings of Issues One, Two and Three are incorporated herein by reference.

This issue was not initially identified in the September 25, 2023 Complaint, however following the October 9, 2023 IEP meeting the parent alleged this issue. An email was sent to the Kansas State Department of Education stating that she did not wish to withdraw her complaint stated this issue occurred during the October 9, 2023 meeting. The Complaint Investigator contacted the KSDE and District Director of Special Education who agreed to include this additional issue in this investigation as opposed to filing a separate child complaint.

The parent alleged that during the October 9, 2023 IEP meeting the district's transition coordinator contacted the Community Developmental Disability Organization (CDDO) on behalf of the student and was told that he was not on the waiting list for the Home and Community based Services Medicaid waiver when in fact he has been receiving waiver services for 11 years. She stated she did not recall providing permission for the school to contact the CDDO about the student.

The district replied that in his role, the transition counselor received a list of students who are signed up for the CCDO, and when he did not see the student's name on the list, he called a contact within the CCDO and confirmed the student was on the waitlist. During the meeting, the CDDO program was mentioned and the reasoning for the interaction mentioned as part of the district's responsibility for interagency communications during transition. The district responded that the parent expressed she was not aware of the program and that the parent's advocate told the parent the transition coordinator/teacher would be able to help get the student on the list and explained what services would be like if he was to receive the services. The meeting notes from the October 9, 2023 IEP meeting document this discussion. Further, after the IEP meeting ended, The Director of Special Education spoke to the parent and the parent expressed she did not know about CCDOs and wondered why her Medicaid Targeted

case manager did not tell her about that because she said she would have signed her student up for that.

Documentation showed that on December 8, 2022 the county court electronically filed for the mother and father as co-guardians for the student.

The IEP dated September 23, 2022 and proposed IEP dated September 18, 2023 showed that the mother and father were the legal educational decisionmakers.

The September 23, 2022 IEP lists no outside agency involvement.

The PWN dated September 23, 2022 was signed by the mother and checked for, "My signature below represents my consent for Cooperative staff to electronically transmit my child's confidential special education records to other school districts or agencies for which I have signed a release of information." No signed release of information was provided by the district.

The parent signed consent on September 23, 2022 "for the school to submit claims to the Kansas Department of Health and Environment (KDHE) as described above" on the Document titled, [district] Parent Consent for Release of Information and Medicaid Reimbursement.

The proposed September 18, 2023 IEP lists outside agency involvement as Pre-Employment Transition Services, Kansas Vocational Rehabilitation Services (KRS) and [county]CDDO. The sign in sheet for this IEP meeting showed a representative for Pre-ETS was in attendance.

The October 9, 2023 IEP meeting minutes report that the transition teacher "reminds mom of CDDO services; the transition teacher "offers to provide mom CDDO waiver; the transition teacher "expresses [student] is currently not on the CDDO waiver; the transition teacher "will help mom followup with CDDO waiver."

Conclusion

IDEA regulations and Kansas specifies that when the IEP team is considering a child's post-secondary goals and transition services needed to assist the child in reaching those goals, the school is required to invite a representative of any agency that is likely to provide or pay for transition services. The school must obtain parental consent to invite the representative from that agency because confidential information about the child would be shared at the meeting (K.A.R. 91-40-17(g)). It is found that the district did not obtain release of information from the mother to talk with or exchange information about the student with the CDDO agency. In addition, an outside agency representative was in attendance at the September 18, 2023 IEP. The release of information requested by the Complaint Investigator and provided by the district is specific to agencies other than the agencies listed as outside agencies for transition services. Based on the foregoing, *it is substantiated* that USD #500 incorrectly contacted an outside agency without the consent of the Student's guardian during the 2023-2024 school year.

Summary of Conclusions/Corrective Action

1. **ISSUE ONE:** A violation of 300.322(b)(2)(i)(A) and K.A.R. 91-40-17(3) was not found, based on document review. Corrective action is not required.
2. **ISSUE TWO:** A violation of K.A.R. 91-40-12, 34 C.F.R. 300.504(c) and 34 C.F.R. 300.502(b)(5) and 34 C.F.R. 300.119 was not found, based on interview with the Director of Special Education, parent, and document review. Corrective action is not required.
3. **ISSUE THREE:** 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 interview with the Director of Special Education, parent, and document review. Corrective action is not required.
4. **ISSUE FOUR:** A violation of 34 C.F.R. 300.321(b)(3), K.A.R. 91-40-17(g) and FERPA was found, based on an interview with the mother and review of documentation. Corrective action is required (as follows):
 - a. **CORRECTIVE ACTION:**
 - i. Request release of information (ROI) from three agencies listed on the student's proposed IEP from parent and provide evidence to SETS that these releases have been collected.
 - ii. Review records of a 5% random sample of transition aged students for each district high school and district transition program for outside agencies identified on the current IEP and determine if a release of information has been obtained from the parent/guardian/student for district staff to communicate about the student's services and provide evidence of such to SETS. SETS will determine if the corrective action will extend to demonstrating that ROIs from parents for all outside agencies are to be submitted as evidence.
 - iii. Review or develop district practices regarding IEP procedures of updating consents and release of information for outside agencies involved in the transition process. Submit revisions or new district practices to SETS.
 - iv. Conduct TASN training on transition responsibilities for coordinating with outside agencies with consent to transition staff and social workers who are responsible for coordinating student services with outside agencies. Provide evidence of training materials and sign in sheets of participants.
 - v. **Date due:** December 31, 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)