

KANSAS STATE DEPARTMENT OF EDUCATION
SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT
FILED AGAINST
UNIFIED SCHOOL DISTRICT # 229
ON SEPTEMBER 5, 2023

DATE OF REPORT OCTOBER 5, 2023

This report is in response to a complaint filed with our office by ----- on behalf of their daughter, ----- . For the remainder of this report, ----- will be referred to as "the student." ----- will be referred to as "the parents." ----- will be referred to as "the student's mother" or "the parent." USD #229 will be referred to as "the district."

Investigation of Complaint

On September 13, 2023, the complaint investigator spoke via telephone with Dr. Mark Schmidt, the Assistant Superintendent of Special Education for the district. The investigator spoke by telephone with the student's mother on September 19 and 20, 2023.

In completing this investigation, the complaint investigator reviewed the following materials:

- IEP for the student dated November 15, 2022
- Email exchange between the building principal and the student's mother over the period of August 15 – 18, 2023
- Email exchange on August 24, 2023 between the special education teacher and the student's mother
- Email exchange dated August 29, 2023 between the student's general education classroom teacher and the student's mother
- Email exchange on August 30, 2023 between the district Elementary Student Services Consultant and the parents
- Individualized Education Program Amendment dated August 30, 2023
- Prior Written Notice for Identification Initial Services, Placement, Change in Services, Change of Placement, and Request for Consent dated August 31, 2023
- Individualized Education Program Amendment dated August 30, 2023 with "Additional notes" dated August 22, 2023
- Prior Written Notice for Identification Initial Services, Placement, Change in Services, Change of Placement, and Request for Consent dated September 9, 2023
- Email dated September 11, 2023 from the special education teacher to the student's mother
- Email dated September 12, 2023 from the student's mother to a special education administrator

- Email dated September 12, 2023 from a special education administrator to the student's case manager and the building principal
- Email dated September 13, 2023 from a special education administrator to the student's mother
- Online calendar for the district
- Teaching license for the student's special education teacher/case manager
- College transcript for the student's special education teacher/case manager

Background Information

This investigation involves an 8-year old girl who is enrolled in the 3rd grade in a district elementary school. She has been diagnosed with both ADHD and Dyslexia.

Issues

In their complaint, the parents identified three issues. An additional issue was included under Issue One and was, with the consent of both parties, investigated separately.

Issue One

The district did not provide Special Education services from August 16 - 31, 2023, as required in the student's Individualized Education Program (IEP). As a result, the student has missed out on time and opportunity to advance appropriately toward attaining her IEP goals or to appropriately access the general education setting.

Parent's Position

The parent asserts that, during the period of August 16 – 31, 2023, the district failed to provide the student with special education services as specified in her November 15, 2022 IEP.

District's Position

The District concedes that special education services were not provided to the student on August 21, 24 and 25. In email correspondence and during an IEP meeting on August 22, 2023, the student's mother had expressed concerns and dissatisfaction regarding the special education teacher's qualifications. As a result, the special education teacher was under the belief that the parents did not want her to provide services to the student.

Applicable Statutes and Regulations

Federal regulations, at 34 C.F.R. 300.101, require states to ensure that a free appropriate public education (FAPE) is made available to all children with disabilities residing within the state. Accordingly, Kansas regulations at K.A.R. 91-40-2(b)(1) require that each school district makes FAPE available to each child with a disability residing in its jurisdiction. The regulations,

at 34 C.F.R. 300.17, define FAPE, in part, as special education and related services provided in conformity with an IEP.

Investigative Findings

The “Statement of Special Education/Related Services” section of the student’s November 15, 2022 IEP states that the student is to receive 30 minutes of direct special education services in a special education classroom five days a week.

Under the “Description of Specially Designed Instruction and Related Service,” is the following statement:

“[The student] will receive targeted individualized, specialized, structured literacy instruction in the special education setting for 30 minutes 5 days per week. Instruction will target skill acquisition and mastery of reading and spelling non-decodable sight words, as well as alphabetical skills. During [the student’s] direct instruction time she will receive instruction in the following things: handwriting, letter identification, letter sound correspondence, phonemic awareness, blending drill, reading words, reading phrases, reading sentences, spelling words, spelling phrases, spelling sentences, red word instruction, and controlled text reading.”

The “Statement of Special Education/Related Services” section of the student’s November 2022 IEP also contains the following statement:

*“The IEP Team has determined that for this student to have opportunities to participate with non-identified peers in extracurricular and nonacademic activities, regularly-scheduled special education and related services may not occur when their delivery would prevent the child from participating in activities such as field trips, assemblies, special events for the general education classroom or school **(such as school year startup/orientation activities) and state or district assessments** (emphasis added). When provision of the regularly scheduled special education and related services is not possible due to events that are beyond the control of the school such as school closure due to weather or other emergencies, emergency drills, or when the child is absent from school, compensatory services will not be provided. Special education services will not be provided when school is not in session according to the school district calendar.*

The first day of school for the district for the 2023-24 school year was August 16, 2023. According to the district, it is common for elementary students – including exceptional students – to engage in fun “get-to-know-you” activities during the first few days of school. In order to allow this student to experience startup/orientation experiences in the least restrictive environment along with her general education peers, she was not removed from the general education classroom to receive special education services during the first 3 days of school on August 16, 17, or 18, 2023.

As noted above under the "District's Position," no services were provided to the student on August 21, 2023.

On August 22 and 23, 2023, the student was – along with her general education classmates – engaged in taking the district's iReady Diagnostic test at the time her special education services were scheduled, so she would have been unavailable to receive services.

No services were provided to the student on August 24 or 25, 2023. On August 25, 2023, the special education teacher informed the building principal that she had not been providing services to the student; the principal directed the teacher to initiate services to the student beginning the week of August 28, 2023.

Special education instruction and benchmarking occurred on August 28, 29, 30, and 31, 2023. During these days, instruction was planned and delivered by the student's licensed special education teacher or by a paraprofessional under the supervision and direction of the special education teacher.

Services to the student were initiated on August 28, 2023 and have continued since that date, although the parents contend that additional services have been missed because the student's special education teacher has been out of the building for scheduled training. (See Issue Two below.)

Per the parents' formal complaint, the building principal sent the student's mother an email on August 30, 2023 offering a meeting with himself and a special education administrator to discuss the parents' concerns regarding missed services. Per the formal complaint, the student's mother declined the meeting and stated, "It looks like we may need to move to mediation or a formal complaint at this point..."

The district asserts that compensatory services are not legally required because the parents presented no evidence that the few missed services caused any educational harm to the student. Nonetheless, on September 11, 2023, a district special education administrator emailed the parents prior written notice of a proposal for compensatory services. The "Description of the Action(s) Proposed or Refused" section of the document contained the following statement:

"The district has reflected on [the student's] special education services during the time of August 16-31, 2023 and September 1st and 6th. They have determined that [the student] did miss special education services for 30 minutes each day on the dates of 8/21/23, 8/24/23 and 8/25/23. The district will ensure that these 90 minutes of direct instruction in the special education setting with a certified special education teacher with training in structured literacy will be made up before [the student's] upcoming IEP Meeting in November 2023.

In addition, special education services were not provided during the first week of school (August 16, 17, and 18) as [the student] was participating in general education start of school orientation. The IEP specifically states that special education services should not take place

during such activities. Special Education services also were not provided when [the student] was engaged in taking the district assessments of iReady Diagnostic on 8/22 and 8/23. To allow [the student] to participate in general education testing, the IEP specifically says the school should not provide IEP services during district or building testing.

In the "Explanation of Why the Action(s) Is/Are Proposed or Refused" section of the prior written notice, the district offered the following:

"The district will provide the compensatory services of 90 minutes of direct special education instruction in the special education setting. Per [the student's] IEP, she should receive these services that were missed.

The district does not believe that the other dates outlined by [the parents] are owed compensatory services. The Statement of Special Education/Related Services section of [the student's] IEP, states that for [the student] 'to have opportunities to participate with non-identified peers in extracurricular and nonacademic activities, regularly-scheduled special education and related services may not occur when their delivery would prevent the child from participating in activities such as field trips, assemblies, special events for the general education classroom or school (such as school year startup/orientation activities) and state or district assessments.'" It is the [district's] understanding that this type of orientation to the class routines occurred during the first week on August 16, 17, and 18. In addition, [the student] was engaged in taking the iReady Diagnostic on 8/22 and 8/23. Special education instruction and benchmarking occurred on 8/28, 8/29, 8/30, 8/31, 9/1, and 9/6. On these days, the para delivered instruction that were planned by [the special education teacher] and [reading specialist] while [the special education teacher] was in training. A licensed teacher was also in the room during this instruction.

At the time of the writing of this report, the parents had not responded to the district's proposal.

Summary and Conclusions

Between August 16 and 31, 2023, there were a total of 8 days when special education services were not provided to the student. On 5 of those days, the student was engaged in activities which her November 15, 2022 IEP states could result in the student missing special education services. Specifically, the student was engaged in startup/orientation activities for the first three days of the school year and participated in district testing on two days.

However, the district acknowledges that the special education teacher did not pull the student for service on three days because the special education teacher did not believe the parents wanted her to work with the student.

Because the district failed to provide these three thirty-minute sessions of special education services (90 minutes total), a violation of special education statutes and regulations *is substantiated* on this issue.

Note: An additional day of alleged missed services during the period of August 16 – 31, 2023 will be addressed below under Issue Two.

Issue Two

The special education teacher assigned to provide services to the student will be out of the building various days over the next five weeks in order to receive training on structured literacy from the district's Dyslexia Coordinator. There is no plan in place for a special education teacher with training in structured literacy, science of reading, to see the student for her IEP service minutes until the assigned teacher is trained. As a result, the student will miss out on time and opportunity to advance toward attaining her IEP goals or appropriately access the general education setting.

Parent's Position

It is the position of the parents that all special education instruction provided to the student must – as established in the student's IEP – be delivered by someone who is trained in structured literacy. The parents assert that when the student's assigned special education teacher is away from the building, the student's instruction will be provided by individuals who lack sufficient training to be able to effectively teach the student.

District's Position

The district asserts that in the absence of the student's special education teacher, the delivery of services to any special education student can properly and effectively be delivered by trained and supervised paraeducators and by certified substitute teachers.

Applicable Statutes and Regulations

Federal regulations, at 34 C.F.R. 300.101, require states to ensure that a free appropriate public education (FAPE) is made available to all children with disabilities residing within the state. Accordingly, Kansas regulations at K.A.R. 91-40-2(b)(1) require that each school district makes FAPE available to each child with a disability residing in its jurisdiction. The regulations, at 34 C.F.R. 300.17, define FAPE, in part, as special education and related services provided in conformity with an IEP.

Each school district must ensure that all personnel necessary to carry out the requirements of IDEA are appropriately and adequately prepared and trained. All special education personnel, as appropriate, shall have the content knowledge and skills to serve children with exceptionalities. This includes special education teachers, related services personnel and paraeducators. School districts must take steps to actively recruit, hire, train, and retain

qualified personnel to provide special education and related services to children with disabilities (34 C.F.R. 300.156; 34 C.F.R. 300.207).

The Kansas State Department of Education has widely recognized that paraprofessionals are utilized in the delivery of specially designed instruction under the supervision and direction of a special education teacher. (See KSDE: *Considerations for the Effective Use of Paraprofessionals in Schools*, pg. 4.)

“One of the most common uses of paraprofessionals in K-12 public education is assisting in the education or instruction of a student with a disability under the Individuals with Disabilities Education Act (IDEA, 2004). Paraprofessionals were formally identified in federal legislation with the 1997 Amendments to the IDEA (P.L. 105-17). The term paraprofessionals continued in the 2004 reauthorization of IDEA. Federal regulations at 34 C.F.R. § 300.156(b)(2)(iii) allows paraprofessionals and assistants who are appropriately trained and supervised, in accordance with state law, regulation or written policy, in meeting the requirements of this part to be used to assist in the provision of special education and related services under this part to children with disabilities. Further 34 C.F.R. § 300.156(a) requires each state to establish and maintain qualifications to ensure paraprofessionals are appropriately and adequately trained.”

The Individuals with Disabilities Education Act (IDEA) does not establish requirements for special education paraprofessionals, however, the district does require paraeducators to complete 10 – 20 hours of in-service training annually.

Investigative Findings

The “Statement of Special Education/Related Services” section of the student’s amended November 10, 2022 IEP includes the following:

“[The student] will receive targeted individualized, specialized, structured literacy instruction in the special education setting for 30 minutes 5 days per week. Instruction will target skill acquisition and mastery of reading and spelling non-decodable sight words, as well as alphabetical skills. During [the student’s] direct instruction time she will receive instruction in the following things: handwriting, letter identification, letter sound correspondence, phonemic awareness, blending drill, reading words, reading phrases, reading sentences, spelling words, spelling phrases, spelling sentences, red word instruction, and controlled text reading.”

The “Other Considerations” section of the student’s November 15, 2022 IEP contains the following question:

“Is special training required for a student’s teacher and/or other staff member(s) that is directly targeted on assisting the teacher and/or staff to meet a unique and specific need of the student related to 1) student’s progress toward attaining the measurable annual goals

and 2) involvement and progress in the general curriculum and participation in extracurricular and other non-academic activities?"

In explaining why that question was answered "Yes," the IEP states:

"Special training is needed in an evidence-based multi-sensory structured literacy program based on the science of reading to address [the student's] needs in the area of reading."

The student's special education teacher – who has previously been trained in the area of structured literacy (see Issue Three) - has also been scheduled to receive additional district-sponsored training in structured literacy. That training would take her away from the classroom over a period of five school days (August 30, September 6 and 20, and October 4 and 11, 2023).

According to the district, when the special education teacher is away from her class, a certified substitute teacher or a paraeducator will use lesson plans created and directed by the special education teacher and materials provided by the special education teacher to deliver specially designed instruction to the student. As will be discussed below under Issue Three, the special education teacher assigned to work with the student meets state and district requirements with regard to licensure, certification, preparation and training and is, therefore, qualified to develop instruction for the student.

When the special education teacher was absent from the building on August 30, 2023, 30 minutes of special education services were provided by a certified substitute teacher and a paraeducator using materials developed by the special education teacher. On that date, the student completed baseline assessment activities related to her IEP.

On September 6, 2023, those services were provided by a certified substitute teacher again using materials developed and provided by the special education teacher which included "red word instruction" – an area specified in the student's IEP.

On September 11, 2023, the district provided the parents with prior written notice of a proposal for the provision of compensatory services. (See Issue One above.) Included in that prior written notice was the following statement:

"[The student] was involved in special education orientation, instruction, and/or benchmarking on [the school days between August 25 and 31, 2023 including August 30, 2023]. These activities were planned by a certified special education teacher who has been trained in the structured literacy required on [the student's] IEP. The orientation, instruction, and benchmarking were carried out by the licensed special education teacher, a licensed substitute teacher, or a paraprofessional who had received instruction on what activities to carry out in the special education teacher's absence."

The district confirmed that the paraeducator has completed the in-service training hours required by the district.

Summary and Conclusions

The student's November 15, 2023 IEP notes that the student's teachers need

"Special training is needed in an evidence-based multi-sensory structured literacy program based on the science of reading to address [the student's] needs in the area of reading."

The student's special education teacher received such training through her Master's level training program (as will be discussed further under Issue Three) and is receiving additional district-sponsored training during the fall semester of the 2023-24 school year. The special education teacher is therefore qualified to design, deliver, or supervise the delivery of instruction specified under the "Statement of Special Education/Related Services" section of the student's amended November 10, 2022 IEP.

During those occasions when the student's special education teacher is out of the building receiving required training in structured literacy as required by the student's IEP, the district will utilize qualified substitute teaching and paraeducator staff to deliver the student's thirty minutes of special education services using plans and materials developed by the special education teacher.

At the time this complaint was filed, the student's special education teacher had been absent from the building for only one day of training, August 30, 2023. The student's thirty minutes of special education services were delivered that day by a certified substitute teacher and a qualified paraeducator using plans developed by the special education teacher who meets state and district requirements with regard to licensure, certification, preparation and training. No evidence has been provided by the parent to dispute this. A violation of special education statutes and regulations *is not substantiated* on this issue.

Issue Three

For the 2023-24 school year the district has failed to provide a qualified special education teacher who understands the student's unique needs and diagnosed disability to be responsible for the IEP implementation. As a result, the student missed out on time and opportunity to advance appropriately toward attaining her IEP goals or appropriately access the general education setting.

Parents' Position

It is the position of the parents that the special education teacher assigned to provide services to the student for the 2023-24 school year lacks the training to provide the instruction required to properly implement the student's IEP. The parents contend that the teacher has been required to participate in district-sponsored Orton-Gillingham specific training – an acknowledgement on the part of the district of the teacher's inadequate training.

District's Position

It is the position of the district that the special education teacher assigned to work with the student is appropriately trained and certified to implement the student's IEP.

Applicable Statutes and Regulations

As stated above under Issue Two, each school district must ensure that all personnel necessary to carry out the requirements of IDEA are appropriately and adequately prepared and trained. All special education personnel, as appropriate, shall have the content knowledge and skills to serve children with exceptionalities. This includes special education teachers, related services personnel and paraeducators. School districts must take steps to actively recruit, hire, train, and retain qualified personnel to provide special education and related services to children with disabilities (34 C.F.R. 300.156; 34 C.F.R. 300.207).

Federal regulations implementing the Individuals with Disabilities in Education Act (IDEA) at 34 C.F.R. 156(c) require that the state education agency (KSDE) must ensure that "each person employed as a public school special education teacher in the State who teaches in an elementary school, middle school, or secondary school – (i) Has obtained full State certification as a special education teacher (including certification obtained through an alternate route to certification as a special educator), or passed the State special education teacher licensing examination, and holds a license to teach in the State as a special education teacher; (ii) Has not had special education certification or licensure requirements waived on an emergency, temporary, or provisional basis; and (iii) Holds at least a bachelor's degree."

Regarding instructional methodology, the Office of Special Education Programs (OSEP), which is the office within the United States Department of Education that writes and enforces the federal regulations implementing the IDEA has stated that "the courts have indicated they will not substitute a parentally-preferred methodology for sound educational programs developed by school personnel in accordance with the procedural requirements of the IDEA to meet the educational needs of an individual child with a disability." See Federal Register, Vol. 64, p. 12552, March 12, 1999.

Further, in Hendrick Hudson Dist. Bd. Of Ed. v. Rowley, 458 U.S. 176, 102 S.Ct. 3034, 553 IDELR 656 (1982), the Supreme Court held that the primary responsibility for choosing instructional methodology is left with the local school district.

On November 12, 2019, the Kansas State Board of Education approved the recommendations of the Dyslexia Committee for pre-service teacher programs, professional learning, screening and evaluation, and evidence-based reading practices and adopted a definition of dyslexia developed by the International Dyslexia Association (IDA). The KSDE Dyslexia Committee was established for the purpose of evaluating recommendations of the Legislative Task Force on Dyslexia which was created in 2018.

No new regulations – special education or otherwise – were passed by the State Board in November 2019 with regard to dyslexia. The approved recommendations mentioned above

involve a number of actions that will take place based on established timelines beginning in July of 2020 with implementation into 2024. The Legislative Task Force on Dyslexia and the Kansas State Board of Education have required that schools provide annual professional development on structured literacy and/or dyslexia. The training should be hands-on, with evidence-based practices, on the nature of dyslexia, procedures to identify students who are struggling in reading, intervention strategies and procedures, tiered intervention practices, or progress monitoring.

Investigative Findings

The special education teacher who has been assigned by the district to provide direct special education services to the student is licensed to teach high incidence special education in Kansas. In order to obtain her special education license, the teacher has received required training in structured literacy, a three-credit hour course entitled "Teaching Reading in Special Education" as a part of a Masters level program at a state university.

The special education teacher has met state and district requirements with regard to licensure, certification, preparation and training. The parent has provided no evidence to show that these facts are in dispute.

The district is currently providing the special education teacher with additional training in the Orton-Gillingham approach to the teaching of reading. The district routinely provides advanced training to teachers and other staff members as a part of its staff development program. This training complies with requirements established by the Legislative Task Force on Dyslexia and the Kansas State Board of Education which have required that schools conduct annual professional development on structured literacy and/or dyslexia.

The Orton-Gillingham approach is, as shown on its website, "a direct, explicit, multisensory, structured, sequential, diagnostic, and prescriptive way to teach literacy when reading, writing, and spelling does not come easily to individuals, such as those with dyslexia."

Summary and Conclusions

This investigation has determined that the special education teacher assigned by the district to provide special education services to the student meets state and district requirements with regard to licensure, certification, preparation and training. No evidence has been provided by the parent to dispute this.

Additionally, while a parent may allege a failure on the part of a district, special education statutes and regulations do not grant parents the right to dictate either the personnel designated to deliver special education services or the methodology or materials that will be used in the instruction of the students.

Under these circumstances, a violation of special education statutes and regulations *is not substantiated* on this issue.

Issue Four

The district failed to adhere to the procedures outlined in the Individuals with Disabilities Education Act (IDEA) for providing necessary paperwork to parents.

Parents' Position

The parents assert that they were not provided with notice of an IEP team meeting held on August 23, 2023. The parents also contend that the district did not in a timely manner provide them with a copy of the amended IEP developed as a result of that meeting.

District's Position Regarding Notice of an IEP Team Meeting

The district contends that the purpose of the August 23, 2023 meeting was to address general concerns raised by the parents. It is the position of the district that because the meeting was *not* convened to discuss the student's eligibility, evaluation, reevaluation, or to form an IEP, no Notice of Meeting was required. The district asserts that it would be inefficient and nearly impossible to timely address parent concerns if the law required schools to send a ten-day written notice of every meeting held to discuss student academic affairs of school related matters with parents.

Applicable Statutes and Regulations Regarding Notice of an IEP Team Meeting

Schools must afford parents the opportunity to be members of any decision-making team for their child. In order to allow parents meaningful participation in the IEP process, schools must provide parents written notice of any initial IEP Team meeting or any subsequent IEP meeting held to discuss eligibility, evaluation, reevaluation, IEP development, the provision of a free appropriate public education (FAPE) for their child and educational placement decisions. That notice must be provided at least ten days in advance of the meeting (K.A.R. 91-40-17(a)(1) and (2)). The notice shall indicate the purpose, time, and location of the IEP Team meeting and the titles or positions of the persons who will attend on behalf of the agency, including, if appropriate, any other agency invited to send a representative to discuss needed transition services. K.A.R. 91-40-17.

A child's teacher, other school staff, or the parents of a child with an exceptionality have the right to request an IEP meeting at any time to address any lack of expected progress toward the attainment of goals, information provided by the parents, the child's anticipated needs or other matters (K.S.A. 72-3429(f)). A parent may choose to waive the right to 10-day notice of an IEP team meeting in order to expedite the scheduling of that meeting.

Not every meeting between school officials and the parents/guardians of a student with an IEP constitutes an IEP Team meeting for which notice is required. For instance, minor changes to a child's IEP can be made following the annual IEP meeting (34 CFR 300.324(a)(4)(i)). A parent of

an exceptional child and the public agency may develop a written document to amend or modify the child's IEP without convening an IEP Team meeting.

Investigative Findings Regarding Notice of an IEP Team Meeting

As noted above under Issue One, the first day of school for the district for the 2023-24 school year was August 16, 2023.

Before the start of the year, on August 15, 2023, the student's mother sent an email to the student's special education case manager and the building principal proposing a meeting to discuss a number of issues related to the provision of special education services to the student. In her email, the parent identified concerns regarding the following:

- "the plan when services are missed" when the case manager/special education services provider is participating in training on the Orton-Gillingham method of reading instruction;
- the use of the "Dyslexia Coordinator" for the district in providing services to the student during the upcoming school year;
- the role of the building's "reading interventionist" in providing services to the student; and
- the implementation of an element of the student's IEP with regard to the conferencing of the student's classroom teacher with general and special education staff.

The "Statement of Special Education/Related Services" section of the student's November 15, 2022 IEP states that she is to receive 15 minutes of indirect services from the special education teacher 5 times a week. That service was explained in the "Description of Specially Designed Instruction and Related Service" portion of that same section as follows:

*"[The student's] classroom teacher will confer **regularly** (emphasis added) with the special education teacher, as well as district reading specialists trained in the science of reading to implement strategies to better facilitate instruction as needed."*

In her August 15, 2023 email, the student's mother cited the above phrasing regard these indirect services and noted that the student's IEP was due for review in November 2023 but stated that she wanted to discuss her issues and "problem solve with the IEP team before that date."

The building principal replied to the parent via email late in the afternoon of August 16, 2023, providing responses to questions posed by the parent in her email. The parent wrote back to the principal later in the evening of August 16, 2023 stating that she had requested an IEP team meeting to discuss her previously stated concerns.

On August 17, 2023, the principal sent an email to the student's mother proposing August 22, 2023 as a possible date for the requested meeting and asked about the parent's availability.

On August 17, 2023, the student's mother wrote back to the principal stating that she would be

available “after 1 pm on 8-22-23.” The parent also noted that she wanted to invite the student’s outside tutor to the meeting. On August 18, 2023, the principal wrote again to the student’s mother stating:

“...we could get almost everyone together at 2:30 on 8/22 at [the student’s school]...Unfortunately, [the reading specialist] is not available at that time, but we will take notes and relay information back to her...”

An IEP team meeting was convened on August 22, 2023 to discuss the parents’ concerns. In attendance in addition to the student’s mother were the building principal, a special education administrator, the student’s special education case manager and special education service provider, the student’s general education teacher, the school psychologist, and the student’s private tutor.

According to the student’s mother, she had not been provided with notice of the meeting, so she asked whether “this was a formal IEP meeting.” The parent reports that she was told that it was.

Summary and Conclusions Regarding Notice of an IEP Team Meeting

The student’s mother sent an email to the student’s case manager and the building principal on August 15, 2023 – the day before the start of the 2023-24 school year - expressing concern regarding the delivery of special education services and requesting a meeting with the IEP team. The parent reiterated her request for an IEP team meeting in an email to the principal on August 16, 2023. A meeting was scheduled for August 22, 2023.

At the meeting, the parent asked the assembled group whether the meeting was an IEP team meeting; she was told that it was. The parent and the student’s private tutor were present as were required members of an IEP team including the building principal, the student’s general education teacher, the student’s case manager/special education teacher, and a school psychologist. The team discussed concerns expressed by the parent including amendments to the student’s IEP. The parent was not provided 10-day notice of the IEP team meeting and was not asked to waive that required notice.

It is clear that the student’s mother exercised her right to request an IEP team meeting to discuss concerns regarding the implementation of the student’s IEP. A properly constituted IEP team – which included the student’s mother – was present at the meeting on August 22, 2023 where decisions were made regarding an amendment to the student’s IEP. Because the parent had requested the IEP team meeting and wanted that meeting expedited, she would likely have waived her 10-day notice of the meeting, but the district did not seek that waiver and failed to provide notice of the meeting to the parent. For that reason, a procedural violation of special education statutes and regulations *is substantiated* on this aspect of this issue.

District's Position Regarding the Provision of Documents to Parents

It is the position of the district that the parents were timely provided with prior written notice (PWN) of proposed amendments to the student's IEP as well as a copy of the student's amended IEP.

Applicable Statutes and Regulations Regarding Provision of Documents to Parents

One of the procedural safeguards afforded to parents is the required PWN of certain proposed special education actions. This notice must be provided to parents if the school proposes to initiate or change, or denies a request to change, the identification, evaluation, educational placement of their child, or provision of special education and related services (FAPE) to their child (K.S.A. 72-3430(b)(2); 34 C.F.R. 300.503(a)(2)). Parents must also be provided a final copy of the IEP at no cost to the parent (K.A.R. 91-40-18(d); 34 C.F.R. 300.322(f)).

KSDE has determined that unless there is an unusual circumstance, districts must provide parents with a PWN within fifteen school days in response to any parent request regarding identification, evaluation, placement or the provision of a FAPE. See KSDE Memo "*Reasonable Time*" to respond to parent request for evaluation, January 8, 2002. This timeline also applies to the provision of a final copy of a student's IEP.

Investigative Findings Regarding the Provision of Documents to Parents

At the IEP team meeting on August 22, 2023, the student's mother expressed concern with regard to the measurement of the term "regularly" as applied to the student's indirect services. The special education administrator in attendance at the meeting told the parent that an amendment to the student's then current IEP would be completed to define "regularly" in the IEP as "bi-weekly."

On August 31, 2023 (7 school days after the August 22, 2023 IEP team meeting), prior written notice of the proposed change to the student's IEP was posted on "Synergy," the district's student information system. According to the prior written notice form, it was proposed that the student's special educator teacher would collaborate with the District Dyslexia Coordinator bi-weekly for 20 minutes to discuss progress and instruction. It was also proposed that the special education teacher and general education teacher will collaborate weekly to meet the student's needs in the general education setting. A copy of an IEP Amendment was posted along with the prior written notice form.

The parents were familiar with the student information system and had received special education documents through that system in the past. However, due to technical problems, the parents were unable to access the documents through Synergy.

The student's mother notified the district on September 9, 2023 (11 school days after the August 22, 2023 IEP team meeting), that she could not access the documents. The assistant superintendent for special education spoke with the student's mother by telephone to resolve the parent's access issues.

A special education administrator sent the following documents to the parents via email on September 11, 2023 (13 school days after the August 22, 2023 IEP team meeting):

- Prior written notice of a proposed re-evaluation of the student;
- the amended IEP for the student;
- prior written notice regarding the amended IEP; and
- prior written notice regarding the concerns of the parents as expressed during the August 22, 2023 IEP team meeting.

In her email, the special education administrator asked how the parent would like to receive hard copies of all the above documents; the student's mother responded via email on September 12, 2023 that she wanted the district to "send hard copies home with [the student] for us to review." The administrator then sent an email to the student's case manager and the building principal asking them to print off the forms and "send home with [the student] today."

Upon receipt of the documents on September 12, 2023 (14 days after the August 22, 2023 IEP team meeting), the student's mother notified the district that the amended IEP which she had been provided was not consistent with the prior written notice form and continued to include the term "regularly" rather than the expanded explanation outlined in the prior written notice form.

Accordingly, the district revised the amended IEP and, via email on September 13, 2023 (15 school days after the August 22, 2023 IEP team meeting) sent the parents a revision that included the following statements:

**Amendment 8/22/23 Definition to the term "Regularly" from 2nd paragraph: [The student's] special educator teacher will collaborate with the District Dyslexia Coordinator bi-weekly for 20 minutes to discuss current interventions needed. [The student's] special education teacher and general education teacher will collaborate weekly to meet [the student's] needs in the general education setting.*

**Amendment 8/22/23 [the student] will be given a supplemental RAN assessment quarterly.*

In the September 13, 2023 email to the student's mother, the special education administrator also outlined other changes that had been made to the document as follows:

- The names of the reading specialist and the student's tutor were added to the cover attendance page; and
- a statement regarding the changes to define "regularly" were added to the cover page of the IEP.

The special education administrator also pointed out that the definition of "regularly" had been included on page 7 of the copy of the amendment previously sent to the parent on September 13, 2023 and remained in this newer version of the document.

Summary and Conclusions Regarding the Provision of Documents to Parents

The district posted copies of prior written notice regarding proposed changes to the student's IEP on the district's online communication system 7 school days after the IEP team meeting on August 22, 2023. However, because of technical difficulties, the parents were not able to view those documents and notified the district about their access problems 11 school days after the IEP team meeting.

The district provided copies of the documents via email two days after being notified of the technical problem, but the parent notified the district that the amended IEP and the prior written notice document were inconsistent. Fifteen school days after the IEP team meeting, the parents were provided with both electronic and hard copies of the corrected version of the amended IEP.

Because the parents were provided with copies of both the student's amended IEP and the prior written notice document within 15 school days of the August 22, 2023 IEP team meeting, a violation of special education statutes and regulations *is not substantiated* on this aspect of this issue.

Corrective Action

Information gathered in the course of this investigation *has substantiated* noncompliance with special education statutes and regulations on two of the issues presented in this complaint. Specifically, a violation has been substantiated with regard to

- **34 C.F.R. 300.17(d)** which requires that a free appropriate public education be provided to a special education student in conformity with his/her IEP; and
- **K.A.R. 91-40-17(a)(1) and (2)** which requires that parents be provided with 10-day prior notice of an IEP team meeting.

Therefore, USD #229 is directed to take the following actions:

1. Submit to Special Education and Title Services (SETS) within 21 calendar days of the date of this report, a written statement of assurance stating that it will comply with

- 34 C.F.R. 300.101(a) and 34 C.F.R. 300.17(d) by implementing this student's IEP as written; and with
 - K.A.R. 91-40-17(a)(1) and (2) by providing parents 10-day prior notice of an IEP team meeting including those IEP team meetings requested by parents. (If the parents have requested an expedited meeting, parents must agree to waive 10-day prior notice if the meeting is to be held before the 10-day period is up.)
2. Submit to SETS within 21 calendar days of the date of this report, a plan for the provision of 90 minutes of compensatory special education services in the special education setting.
 3. Within 5 school days of receipt of SETS approval of the plan identified under Corrective Action 2 above, the district shall schedule a meeting with the parents to present the plan.
 - a. The parents shall have the option of accepting or rejecting the plan and shall notify the district in writing of their decision within 5 calendar days of the meeting described above.
 - b. The district shall notify SETS of the parents' decision no later than 5 calendar days after receipt of the parents' written response.
 4. By no later than November 5, 2023, provide to SETS verification that administrative and special education staff at the student's school have been provided training regarding the proper response to a parental request for an IEP team meeting. Training should specifically address the provision of 10-day notice of the meeting and how to deal with a request that an expedited IEP team meeting be held at a time that does not allow for 10-day notice.
 5. Further, USD #229 shall, within 20 calendar days of the date of this report, submit to SETS one of the following:
 - a. A statement verifying acceptance of the corrective action or actions specified in this report;
 - b. a written request for an extension of time within which to complete one or more of the corrective actions specified in the report together with justification for the request; or
 - c. a written notice of appeal. Any such appeal shall be in accordance with K.A.R. 91-40-51(f).

Investigator



Diana Durkin
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)