

**KANSAS STATE DEPARTMENT OF EDUCATION  
SPECIAL EDUCATION AND TITLE SERVICES**

**REPORT OF COMPLAINT  
FILED AGAINST  
UNIFIED SCHOOL DISTRICT #402  
ON APRIL 16, 2024**

**DATE OF REPORT MAY 20, 2024**

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

The complaint is against USD #402 (Augusta Public Schools) who contracts with the Butler County Special Education Interlocal #638 (BCSBC) for special education services. In the remainder of the report, these two responsible public agencies may be referred to as “the district”, “the local education agency (LEA)”, or “the school”.

The Kansas State Department of Education (KSDE) allows approximately 30-days 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 April 16, 2024.

### **Evidence Reviewed**

During the investigation, the Complaint Investigator, Nancy Thomas, reviewed all evidence and documentation, which was provided by both the district and the complainant.

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

1. Formal Complaint dated April 14, 2024 written by the mother
2. Response to the allegations dated April 25, 2024 and written by April Hilyard, Director of the Butler County Special Education Interlocal #638 (BCSBC)
3. Referral for Initial Special Education Evaluation dated October 23, 2023
4. Prior Written Notice (PWN) for Evaluation or Reevaluation and Request for Consent dated October 23, 2023
5. Notice of Special Education Meeting dated December 21, 2023
6. Notice of Meeting Acknowledgement dated January 12, 2024
7. Evaluation Report dated January 12, 2024
8. Individualized Education Program (IEP) dated January 12, 2024

9. PWN for Identification, Special Education and Related Services, Educational Placement, Change in Services, Change of Placement, and/or Request for Consent dated January 12, 2024
10. Copy of notes from the January 12, 2024 IEP team meeting written by Aimee Carey, General Education Science Teacher
11. Letter to the parents of the student dated January 19, 2024 written by Brettany Williams, School Psychologist
12. Emails dated January 15 through January 18, 2024 between the parent and Denise Walton, Assistant Director of Special Education for the BCSBC
13. The student's grade record for the 2023-24 school year

Also as part of the investigation, the parent was interviewed by telephone on May 3, 2024. In addition, the LEA provided additional clarification and documentation on May 14, 2024.

### **Background Information**

The student is a 12-year old male currently enrolled in the sixth grade in USD #402 and attends his neighborhood school, Augusta Middle School. The student has spent his entire educational career in USD #402. The student was initially evaluated during the first grade and identified as a student with a disability under Section 504 due to a medical diagnosis of attention deficit hyperactivity disorder (ADHD), which was determined to have a substantial impact on a major life activity. An individual accommodation plan was developed to provide accommodations in the general education setting and is still being implemented during the current school year.

Both the parent and the LEA acknowledge that the student was referred for an initial special education evaluation by the parent at the end of the first quarter in October 2023. The parent expressed concerns regarding the ongoing impact of ADHD and his academic progress. In addition, the parent was concerned with his written expression skills, both his ability to put his thoughts and ideas into written form as well as his poor handwriting which was often illegible to both the reader and the student himself. The parent indicated the student complains of sore fingers and hand cramping when completing written assignments.

Both the parent and the LEA acknowledge that the parent provided written consent for an initial special education evaluation which was subsequently completed on January 12, 2024. At that time, the student was determined to be eligible for special education and related services under the exceptionality categories of Specific Learning Disabilities (primary) and Other Health Impairment due to the medical diagnoses of ADHD (secondary). An IEP was developed on that same date with parent participation and the LEA provided the parent with prior written notice and request for consent for initial eligibility, initial services, and initial placement on January 12, 2024.

## **Issues Investigated**

Based on the written complaint, one issue was identified and investigated.

### **Issue One**

USD #402, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), changed the student's placement to a more restrictive setting by moving the student from the white team to the blue team in order to receive special education services during the 2023-24 school year.

### **Positions of the Parties**

The parent reported that USD #402 violated the IDEA in regards to providing the proposed special education services in the least restrictive setting. Since the beginning of the 2023-24 school year, the student was assigned to the White Team which consisted solely of general education teachers; however, in order to access the proposed special education services in the January 12, 2024 IEP, the student would be forced to move to the Blue Team which includes general education and special education teachers as well as special education paraprofessionals. The parent believes this constitutes a change in the student's educational placement to a more restrictive setting and she refused to provide written consent for initial placement and services.

The LEA reported the student was assigned to general education classes taught by general education teachers on the White Team rather than the general education classes taught by general education teachers on the Blue Team at the beginning of the 2023-24 school year.

USD #402 noted that both teams provide general education instruction to sixth grade students using the sixth grade general education curriculum at Augusta Middle School. The district reported that the Blue Team also includes special education staff who provide specialized instruction to students in both the general education classroom setting as well as the special education classroom settings.

In order for the student to receive the special education services proposed in the January 12, 2024 IEP, the student would need to transfer from the White Team with no certified special education teachers to the Blue Team consisting of both appropriately certificated general education and special education teachers. The district believes that a change of Team assignment is not a change of placement but rather a change in the classroom assignment as the student would still be placed in the general education setting but just taught by a different team of general education teachers. This change in classroom assignment would then make it possible for the student to have access to the special education teachers who work with the general education teachers on the Blue Team for providing the special education services required by the IEP.

## Applicable Law

Federal regulations implementing the IDEA at 34 C.F.R. 300.115 require school districts to ensure a continuum of placement options is available to meet the needs of children with disabilities for special education and related services in the least restrictive environment (LRE). The continuum includes various educational settings, such as general education class, special classes, special schools, home instruction, instruction in hospitals, and instruction in institutions.

Kansas regulations implementing the IDEA at K.A.R. 91-40-1(t) states that the terms "Educational placement" and "Placement" mean the instructional environment in which special education services are provided.

*Chapter 6: Educational Placement and Least Restrictive Environment (LRE) in the Kansas Special Education Process Handbook states,*

*Although each school is not required to establish or maintain all options on the continuum, it must make an option available if the individual needs of a child require a specific placement option . . . This continuum of various types of classrooms and settings in which special education is provided is intended to ensure that a child with a disability is served in a setting where the child can be educated successfully with other children without disabilities to the maximum extent appropriate.*

In addition, although each school building is not required to be able to provide all the special education and related services for all types and severities of disabilities at the school, the school district has an obligation to make available a full continuum of alternative placement options that maximize opportunities for its children with disabilities to be educated with nondisabled peers to the extent appropriate. In all cases, placement decisions must be individually determined on the basis of the child's abilities and needs and on each child's IEP; and not solely on factors such as category of disability, severity of disability, availability of special education and related services, configuration of the service delivery system, availability of space, or administrative convenience. (Federal Register, August 14, 2006, p. 46588.) To help schools make the full continuum available, K.S.A. 72-3411 identifies and authorizes the options that districts have for meeting the LRE requirement by providing services within its schools; in the home, hospital, or other facilities; through a contract with another district; through a cooperative agreement with one or more districts; or through a contract with a private nonprofit or a public or private institution. Facilities where special education services are provided must be equivalent to those where general education classes are held.

Federal regulations at 34 C.F.R. 300.503(a) requires school districts to provide parents with prior written notice a reasonable time before they propose or refuse to initiate or change the identification, evaluation, educational placement, or the provision of FAPE to the student. Federal regulations at 34 C.F.R. 300.300(b) also requires school districts to obtain informed written consent prior to providing initial special education and related services to the student.

### **Analysis: Findings of Fact**

An IEP team meeting was held on January 12, 2024 with the parent in attendance. The purpose of the meeting was to review the results of the initial special education evaluation, determine eligibility for services, and the development of an IEP, if appropriate. IEP team meeting notes reflect average reading and math achievement but significant delays in written expression and possible signs of dysgraphia.

The PWN dated January 12, 2024 informed the parent that the student was eligible for special education services under the disability categories of Specific Learning Disability (primary) and Other Health Impairment due to his medical diagnosis of ADHD (secondary) based on the results of the special education evaluation completed on that same date.

The PWN dated January 12, 2024 also informed the parent that the district was proposing to provide the student with 120 minutes per day of special education instruction through a placement in a general education setting. The district noted this support was proposed to be provided through a reassignment of the student to the Blue Team rather than the student's current White Team assignment. USD #402 indicated the change was based on the expertise of the Blue Team, which was an existing team of general education teachers and special education staff who were trained and experienced in providing a variety of appropriate strategies for providing special education instructional support in the general education setting.

Interviews and emails dated between January 15 and January 18, 2024 show the parent did not want the student to be reassigned to a different team. She was concerned with the stigma of changing class assignments mid-year and the amount of time it took the student to develop a good rapport with his current teachers on the White Team. The parent was not in agreement with the proposed reassignment to the Blue Team and she reached out to the School Psychologist to seek additional information and options.

Multiple emails were exchanged between the parent and the Assistant Director of Special Education for BCSEC on January 15, 2024 providing additional information and responding to the parent's concerns. In the final email communication from the district, the district summarized its position as follows:

*I want to clarify that we aren't refusing to provide the services the IEP team collaborated on. The structure of services does require [the student] to have different regular education teachers; however, staff assignment is not an IEP team decision. You absolutely have the right*

*not to give consent, but the team is ready, willing, and able to provide those now if you choose. I did attach the prior written notice. Please let me know how I can help, I know this is a big decision and respect your time to think!*

On January 19, 2024, documentation shows the parent refused to give written consent for the initial special education services. The PWN includes the following statement:

*[The student's] mother wants to decline services this semester so as to not change [the student's] classes.*

The School Psychologist provided a letter to the parent on January 19, 2024 summarizing the district's response to the PWN which stated:

*[The student's] IEP team met on 01/12/2024 and determined he should receive 120 minutes of special education services in the general education classroom. The team determined this is the most appropriate and least restrictive education plan for [the student]. The school continues to recommend [the student] receive these services and placement as described on his IEP. This letter is to inform you that the school (Augusta Middle School and USD #402) is ready, willing and able to provide the services agreed to by his IEP team and described on his IEP.*

## **Conclusion**

Federal regulations implementing the IDEA at 34 C.F.R. 300.115 require school districts to ensure a continuum of placement options is available to meet the needs of children with disabilities for special education and related services in the least restrictive environment (LRE). Kansas regulations implementing the IDEA at K.A.R. 91-40-1(t) states that the terms "Educational placement" and "Placement" mean the instructional environment in which special education services are provided.

In this case, USD #402 provides general education services and placement for all sixth grade students through both a White Team and Blue Team at Augusta Middle School. Thus, both the White Team and the Blue Team provide the same general education instructional environment. The district's practice is to provide any required special education support services to students by assigning the identified student to Blue Team, which is comprised of an existing team of general education teachers and special education staff who were trained and experienced in providing a variety of appropriate strategies for providing special education instructional support in the general education setting.

After finding the student eligible for special education, the district proposed an IEP which required both general education and special education services. In order to implement the proposed IEP, the student would be required to move from receiving general education instruction from the White Team to receiving the general education instruction from the Blue Team in order to have access the special education support required by the proposed IEP

based on the current practice of USD #402. Since the general education instruction would still be provided in a general education environment, albeit with a different group of general education teachers, the student's placement would only change based on the amount of special education support services provided in the general education setting.

In USD #402, those special education services would have been provided via the trained and experienced Blue Team of general and special educators. Therefore, the reassignment of the student from the White Team to the Blue Team would not be considered a more restrictive general education setting simply because of a change in the general education teacher of each class.

In addition, federal regulations at 34 C.F.R. 300.503(a) requires school districts to provide parents with prior written notice a reasonable time before they propose or refuse to initiate or change the identification, evaluation, educational placement, or the provision of FAPE to the student. Federal regulations at 34 C.F.R. 300.300(b) also requires school districts to obtain informed written consent prior to providing initial special education and related services to the student.

In this case, the parent was provided with appropriate prior written notice describing the student's eligibility for special education services, the proposed special education services to be provided, and the proposed reassignment to the Blue Team so the student could access the proposed special education services. The parent refused to provide written consent for the special education services and placement to start during the current semester and the district did not make any changes in the student's current assignment to the White Team during the 2023-24 school year.

Based on the foregoing, a finding of noncompliance is not substantiated against USD #402 because the district practice of having a team of special education staff assigned to support only one team of general education teachers did not restrict the student's access to the general education environment as required by the proposed IEP and thus, did not result in a more restrictive placement for the student.

### **Investigator**

*Nancy Thomas*

Nancy Thomas, M.Ed., Complaint Investigator

## **Right to Appeal**

Either party may appeal the findings or conclusions in this report by filing a written notice of appeal with the State Commissioner of Education, ATTN: Special Education and Title Services, Landon State Office Building, 900 SW Jackson Street, Suite 620, Topeka, KS 66612-1212. The notice of appeal may also be filed by email to [formalcomplaints@ksde.org](mailto: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)