

KANSAS STATE DEPARTMENT OF EDUCATION
SPECIAL EDUCATION AND TITLE SERVICES
REPORT OF COMPLAINT
FILED AGAINST
UNIFIED SCHOOL DISTRICT #107 ROCK HILL PUBLIC SCHOOLS
ON MAY 15, 2024
DATE OF REPORT JUNE 18, 2024

This report is in response to a complaint filed with the Kansas State Department of Education against USD #107 Rock Hill Public Schools on behalf of ----- by his mother ----- . In the remainder of the report, ----- will be referred to as “the student.” ----- is the Student’s mother and in the remainder of the report she will be referred to as “the complainant,” “the parent,” or as “the mother.”

The complaint is against USD #107 Rock Hill Public Schools. In the remainder of the report, USD #107 will be referred to as “the district.” The Student attends Rock Hills Sr. High School and in the remainder of the report this high school will be referred to as the “school.”

The Kansas State Department of Education (KSDE) allows for a 30-day timeline to investigate a complaint from the date in which it was filed. A complaint is considered filed on the date in which it was received by KSDE. In this case, the KSDE initially received the complaint on May 15, 2024 and the 30-day timeline ended on June 15, 2024. Subsequently, the Investigator requested an extension to clarify some of the issues.

Evidence Reviewed

During the investigation, the Complaint Investigator Donna Wickham reviewed all evidence and documentation, which was provided by both the District and the Parent. Additionally, the Investigator contacted the District and Parent several times by phone and email to clarify evidence. The Investigator spoke with the Mother by phone on May 18 and June 13, 2024 and by email on several occasions to clarify specific points. The Investigator interacted with the District by email to clarify evidence and a phone interview was conducted on June 3, 2024 with Amy McDill, Special Education Teacher along with Tammy Somogye the District’s Attorney. The following documentation and information were used in consideration of the issues:

1. Individualized Education Plan and Staffing Summary dated April 19, 2023.
2. Prior Written Notice dated April 19, 2023, consent signed April 19, 2023.
3. Staffing Summary dated August 28, 2023.
4. Letter from Mother to Director of Special Education, dated December 8, 2023.
5. Email from Superintendent to Mother dated January 5, 2024 at 4:00 p.m.

6. Email exchange between Director of Special Education and School Psychologist dated January 10, 2024 between 12:51 p.m. and 3:04 p.m.
7. Email exchange between Director of Special Education and Mother dated between January 10, 2024 at 12:01 p.m. and January 25, 2024 at 8:01 a.m.
8. Prior Written Notice dated January 24, 2024
9. Email exchange between Mother and Superintendent dated January 29, 2024 between 4:37 p.m. and 4:52 p.m.
10. District Response received May 29, 2024.
11. Email from District's Attorney to Investigator dated June 13, 2024 at 2:33 p.m.

Background Information

The student will be a senior during the 2024-2025 school year where he is eligible for special education and related services under the category of Autism and Other Health Impaired because of a medical diagnosis of ADHD. During the 2023-2024 school year the Student had two IEPs in effect. The student receives special education and related services for speech language and psychological services.

This complaint addresses the implementation of the student's services during the school year, specifically accommodations, use of a paraeducator, and an office referral.

Issue Investigated

USD #107, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to implement the Student's IEP by discontinuing paraeducator support and not consistently implementing the student's accommodations (providing Cloze notes or notes of slide with room to take notes on the side of slide prior to class start; not allowing use of notes during quizzes and tests; not allowing the student to listen to music with headphones when he asked due to cell phone ban) and issuing an office referral for questioning how to take notes in study skills class and other classes where lecture notes and books notes are needed 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 special education and supplementary aides and supports written into the April 19, 2023 IEP were not implemented, specifically, 1) paraeducator support for English and Science classes was discontinued without notifying the parent or holding an IEP meeting; 2) accommodations for notetaking (Cloze notes or notes of slides for instruction) and use of notes for quizzes and testing were not consistently provided; 3) the accommodation for the student to listen to music was not implemented due to a cell phone ban; and finally, 4) issuing an office referral to the Student for questioning how to take notes in study skills class and other classes where lecture notes and books notes were needed.

The District responded that the April 2023 IEP team anticipated that the Student would be enrolled in English 11 and a science class during the 2023-2024 school and established special education services and supports accordingly. Things did not happen that way and the IEP team simply forgot to talk with the family about updating the IEP for that change. The District further responded that the Student's IEPs did not stipulate the use of notes on quizzes and tests. In regard to Cloze notes the District responded that they initially provided Cloze notes, but rather than assisting the Student to take better notes the Student was searching for words to fill in the blank and not reading or learning the materials. The District responded that the printout of PowerPoint slides was the notetaking method for History class. At times, the PowerPoint slides were not available at fifth hour for the Student to get ahead of sixth hour. The District stated that the slides were always available online after class, but not always available to use for notetaking. The District responded that the accommodation to listen to music was not specific to using a cell phone to listen to music and that other ways to listen to music were available to the Student to implement the accommodation. Finally, the District responded Student was not following school policy and that the office referral was appropriately assigned.

Discontinuing Paraeducator

The district admitted in their response received on May 29, 2024 and during their interview on June 3, 2024 that they were remiss in talking with the Parent and/or writing an IEP amendment/Prior Written Notice to reduce the paraeducator support when the student did not take a class for which a paraeducator had been determined in the IEP and when the student requested resource room assistance instead.

Notetaking Accommodation

The April 19, 2023 IEP listed the following accommodation, "Provision of Notes ([Student] will be provided cloze notes to complete and will be provided a printed copy of class notes with key details highlighted)."

The August 28, 2023 Staffing meeting notes record that the Parent requested the meeting to clarify accommodations and modifications. The following were recorded: Discussed accommodation #3 (cloze notes) as to how it related to Government class notes. A goal is to

increase independence over time with writing/finding more information and ensuring note taking provisions are available for all classes, assignments, and class expectations.

The January 24, 2024 Prior Written Notice recorded, “[Parent] sent an email on August 21, 2023, stating that she was requesting the IEP meeting because ‘[Student] is not receiving the accommodation of guided notes due to the verbiage in the IEP.’ On August 28, 2023, [Special Education Teacher], [School Psychologist], and [Director of Special Education] met with [Parent] (at [Parent’s] request) to discuss her concerns about accommodation #3. School staff in attendance discussed how they were implementing this accommodation and how they were going to support [Student] going forward with taking notes and utilizing them in class. Those in attendance at the meeting were in agreement that the accommodation included guided notes.” The District clarified in a June 13, 2024 email to the Investigator that an IEP amendment was not issued as part of this Prior Written Notice.

The April 9, 2024 IEP listed the following accommodation, “In classes that have lecture notes the student will be given a copy of the lecture slides (with note taking slides) so that he can take his own notes. The notes will be available online and can also be printed for classes that have textbook or lecture note expectations. The student will also receive support and instruction from his classroom teachers, those that have textbook or lecture note expectation, on how to take notes during class lecture.”

The Student’s Special Education Teacher reported during the interview on June 4, 2024 that although there was not an IEP accommodation for using notes during quizzes or tests that during History class the Student could use notes for quizzes. She further stated that grades were not impacted by the Student not accessing notes.

The Student’s Special Education Teacher reported during the interview on June 4, 2024 that Cloze notes worked well for Science and the Student’s English class and grasp of the content really “took off” and the Student really did not need the Cloze notes to master the English content. She noted that the Cloze notes did not work as well for History class because he used the Cloze notes as more of a crutch rather than learning the content. She stated that the PowerPoint slides with room to take notes was a better match to the Student’s history class, but there were times during fifth hour when the Student was preparing for sixth hour that the PowerPoints were not available ahead of time. She stated that the slides were available after class, but not ahead of time.

Listening to Music Accommodation

The April 19, 2023 and April 9, 2024 IEPs state the accommodation of, “The use of personal headphones (with or without music)” as a means to improve his focus during learning activities. The staffing notes for the April 9, 2024 IEP states that the Student likes to use headphones when working independently.

The District's response stated that a cell phone ban was put into place in the classroom due to students paying attention to phones instead of instruction or doing class work. The Student was given the opportunity to keep his cell phone in a location in the classroom that was close enough for him to use his ear buds to connect to his music, but the Student chose to put his phone in his locker during the class.

The Special Education Teacher stated during the June 4, 2024 interview that the student had access to headphones and music, but the student preferred his music on his cellphone because it was his own playlist.

The Student's Special Education Teacher reported during the interview on June 4, 2024 that the student had access to headphones with or without music. Since the Student could not use his cell phone during the Special education class, he left his phone in his locker rather than bring to class. Other students brought their cell phones to class and put them on the teacher's desk for safe keeping.

Issuing an Incident Report Incorrectly

The Incident Report dated April 23, 2024 at 2:21 p.m. for failing to follow instructions stated, "During life skills he said that I should be doing notes with him instead of life skills and I said no and that it was life skills time and that he would have time later to work on math notes. [Student] stated that he did not know how to take notes. I told him that we had practiced the whole first semester. He then said not out of the book I'm just copying it and I said that is what taking notes from a book is. He then said that his free time is always used on math and I said that was because he took 2 days to complete a test. He was timed for 5 minutes on his phone, hiding it under the desk while taking the math test, which he denied. He then got very upset that he did not give consent to timing him. I continued to redirect him to the instruction to begin working on his life skills course. Upon continued refusals I issued him an office referral for not following instructions.

On April 23, 2024 at 4:43 p.m. the Parent emailed the Principal about the office referral stating that the Student was advocating for himself and expressing concern about learning how to take notes, which was agreed upon in his April 9, 2024 IEP. The Principal replied to the parent on April 24, 2024 at 1:30 p.m. stating, "The referral system is in place for all students. Referrals are made when other efforts to encourage a student to comply with reasonable requests are ineffective."

The four district explanations for "Following Instructions" in the District handbook include, 1. Listen to the person, 2. Remain calm, 3. Do what you have been asked to do, and 4. Check back if necessary.

According to the District handbook, the first offense for a failure to follow a school social skill is a warning so the Student did not miss any instructional time.

Conclusion

Although only one issue of implementation was investigated each of the four allegations of IEP implementation will be addressed separately to explain to the District and Complainant the findings.

Based on the foregoing, *it is substantiated* that USD #107 failed to implement the student's IEP by discontinuing paraeducator support. It is acknowledged that the district was remiss in not amending the IEP and working with the student to explore types of support, but the district committed a procedural error in not meeting and/or amending the IEP.

It is further substantiated that USD #107 failed to continuously provide the student's notetaking accommodations as written in the IEP. The District acknowledged this during their explanation that they were continuously seeking to assist the student to individualize how he took notes in different classes. It was discovered that the Student's notetaking skills were impacted by the class. The Staffing notes were beginning to document this and beginning efforts were occurring to be responsive.

The student's accommodation for listening to music does not specify it must be provided through a cell phone and the district did provide other means for the student to listen to music. It is found that during the cell phone ban that alternate means for implementing the accommodation were available to the student, Using headphones and other music was not the student's preference. Therefore, *it is not substantiated* that USD #107 failed to provide the accommodation for the student to listen to music due to a cell phone ban.

It is found that the District followed school procedures and policies in issuing the Student an office referral for not following instructions. Therefore, *it is not substantiated* that USD #107 incorrectly issued the student an office referral.

Summary of Conclusions/Corrective Action

ISSUE ONE: A violation of 34 C.F.R. §300.323(c)(2) and K.A.R. §91-40-16(b)(2) was found, based on the facts above. Corrective actions are required as follows.

- i. By July 17, 2024 USD #107 shall submit a written statement of assurance to Special Education and Title Services (SETS) stating that it will comply with federal regulations at 34 C.F.R. §300.323(c)(2) to ensure that the IEP team implements the Student's IEP.
- ii. By July 17, 2024 USD #107 shall arrange for KSDE approved professional development for the student's school and related district personnel on revising the IEP documentation and implementing the Student's IEP.
- iii. By the start of the 2024-2025 school year, USD #107 shall conduct the professional development described above and submit the agenda and participants to SETS.

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)