

KANSAS STATE DEPARTMENT OF EDUCATION
SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT
FILED AGAINST
UNIFIED SCHOOL DISTRICT #373
ON MAY 16, 2024

DATE OF REPORT JULY 15, 2024

This report was in response to a complaint filed with the Kansas State Department of Education on behalf of ----- by -----, a former student speech/language therapist. In the rest of the report ----- will be referred to as "the complainant" while ----- is referred to as the "student." ----- is the student's mother and will be referred to as "parent" in this report.

The complainant is not a parent/legal guardian of the student nor a district employee who serves as the IEP team member of the student in the 2023 24 school year. The written permission to release personally identifiable information to the complainant was not given by the student's parents. As a result, the complainant will not provide a copy of the report. The complainant will be notified only that the investigation has been completed and the report has been delivered to the parent and the school district.

The complaint is against USD #373 (Newton Public Schools). The district is contracting with the Harvey County Special Education Cooperative to provide special education services to students enrolled in the district. In the rest of the report, both of these responsible public agencies can be referred to as "the district," "the local education agency (LEA)", or "the school."

The Kansas State Department of Education (KSDE) allows a 60-day timeline to investigate a complaint from the date it was filed. A complaint is considered filed on the date on which it was received by KSDE. In this case, KSDE first received the complaint on May 16, 2024.

Evidence Reviewed

During the investigation, the Complaint Investigator, Nancy Thomas, reviewed all the documentation provided by the district. The complainant was made unable to provide any written documents and reported that he had no direct knowledge of the alleged non-compliance because he was not employed by the district during the school year 2023 24 and did not work or had the opportunity to observe the student.

Reagan Seidl, Director of Special Education for USD #373 and Heather Christner, Special Education Teacher student during the 2023 24 school year were interviewed as part of this investigation on July 8, 2024. Additionally, Ocean Gomez-Poston, former Special Education Paraprofessional in the student classroom during the 2022-23 school year and current Special

Education Teacher of a classroom adjacent to the student's classroom during the 2023-24 school year, was interviewed on July 9, 2024.

It should be noted that the parent's first language is not English and all parental correspondence is given in Filipino. While the parent did not provide any documentation to be considered during the investigation, he requested an interview and denied the use of an interpreter during the interview held on July 9, 2024. The parents did ask that all correspondence regarding the investigation be given in both English and Filipino.

The following written documentation was used in considering the issue:

1. Individualized Education Program (IEP) and Behavior Intervention Plan (BIP) for students dated October 11, 2022
2. Evaluation Report/Reassessment dated May 8, 2023
3. Timeline of Emergency Safety Interventions used on student during school year 2023-24 and attached ESI documentation dated January 17, March 1, April 8, April 24, May 8, May 14, and May 15, 2024
4. Timeline of Board Certified Behavior Analyst supervision and attached administrative records during the 2023 24 school year dated between August 24, 2023 to May 16, 2024
5. Timeline of Staffing and IEP Team Meetings held about the student in the school year 2023-24
6. Notes on the Intervention Review Meeting dated September 27, 2023
7. Crisis Plan dated September 28, 2023
8. IEP and BIP dated October 2, 2023
9. IEP Team Meeting Notes dated October 2, 2023
10. Behavioral Assessment Steps Starting October 2, 2023
11. Intervention Review Meeting Notes dated November 14, 2023
12. Behavioral Assessment Report (FBA) dated January 3, 2024
13. IEP Team Staffing Notes dated January 25, 2024
14. IEP Team Meeting Minutes dated January 29, 2024
15. IEP Team Meeting Notes dated January 31, 2024
16. IEP Team Meeting Minutes dated February 5, 2024
17. FBA Review dated March 5, 2024
18. USD #373 Response to Allegation dated July 9, 2024 written by Ms. Seidl
19. GAAF School Board Policy: Emergency Safety Interventions

Background Information

The student is a 13-year-old young man who enrolled in seventh grade at USD #373 during the 2023 24 school year and placed in a self contained seventh to twelfth grade special

Education classroom for 100% of the school day. The most recent student reevaluation was conducted on May 15, 2023 and noted that the student was nonverbal and had significant delays in the areas of cognitive, adaptive behavior, communication, academic, and social/emotional behavior. Reevaluation documents that the student is continuously eligible for special education and related services under the exceptional category of Autism. The district has announced that the first

He enrolled in USD #373 in first grade when he moved to the United States from the Philippines.

Issues Investigated

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

Issue One

USD #373, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to implement the student's IEP, specifically the behavioral implementation plan (BIP) resulting in separation/restraint incidents during 2023 24 year of study.

Applicable Law

Federal regulations in 34 C.F.R. 300.324(a)(2)(i) require that the IEP team consider using positive behavioral interventions and support, and other strategies, to address any behavioral barriers to the child's learning or the learning of others. This may include IEP objectives, special education services, and/or a behavioral intervention plan (BIP).

Federal regulations in 34 C.F.R. 300.323(c)(2) require school districts to ensure special education and related services are made available to the child in accordance with the child's IEP.

Federal regulations in 34 C.F.R. 300.324(b)(1) require school districts to review and revise the IEP, as appropriate, at least annually to determine whether annual goals for the student are being achieved; to consider the results of any re-examination or any information provided by the parent; and to meet the expected needs of the child or other things.

Kansas is asking every local school board to adopt a policy to address the use of emergency safety interventions (ESIs) such as seclusion or child restraint in crisis situations. USD #373 Reviewed, modified, and adopted School Board Policy GAAF: Emergency Safety Interventions (ESI) on July 24, 2023.

The IDEA does not address the use of ESI and therefore does not confer jurisdiction to investigate the use of ESI. There is a grievance process for allegations relating to ESI, located at K.A.R. 91-42-3. That regulation requires each school district to develop and implement policies regarding the use of ESIs, including a procedure for parents to file a complaint with the local

school board. Accordingly, any parent who wishes to file a complaint regarding the use of ESIs must have access to the local school board's policies.

Therefore, only the implementation of the IEP and BIP will be investigated in situations resulting in the use of ESI for students in the 2023-24 school year, as well as whether the district reviewed and modified the student's IEP in light of the increase in behaviors resulting in ESI during the 2023-24 school year as these issues are included in the IDEA.

Analysis: Findings of Fact

The complainant reported that he was told by an employee of USD #373 that his former student's IEP was not being enforced which resulted in many instances where the use of ESI including both isolation and restraint became necessary during the 2023-24 years of study. The complainant admitted that he had no direct knowledge in relation to the implementation of the student's IEP and that he did not participate in any IEP meetings for the student in the 2023-24 school year. The complainant requested an interview with the current employee of #373 and provided his name and contact information.

Ocean Gomez-Poston reported that she worked as a paraprofessional in the student's special education classroom for the first quarter of the 2022-23 school year and then worked as a long-term special education substitute teacher in another classroom adjacent to the student's classroom for the rest of 2022-23 and the entire 2023-24 school year. Ms Gomez-Poston admitted she was not a member of the student's IEP team and was not responsible for implementing the student's IEP or BIP during the 2023-24 school year. She did state that she knew of the student crisis intervention plan that shared all school staff working in the special education classroom pod inside the school building as a safety precaution.

Ms Gomez-Poston reported her concerns about the implementation of the student's IEP were based on informal observations by the student on the special education pod in the building. He suggested that the student's classroom was not structured and that the student did not appear to be able to see their classroom. He said the student's inappropriate behavior has intensified and become more frequent as the 2023-24 school year progresses. He was particularly concerned that the student would be hidden in a separate room for most of the school day, more often as school went on.

Ms Gomez-Poston also reported that USD #373 did not continue her work for the 2024-25 school year and she believes this is because she has made numerous reports to school administrators about continuing concern with her school co-workers of the 2023-24 school year but has not shared any specifics due to confidentiality. Ms. Poston-Gomez was advised that this employment issue would not be investigated because it also does not fall within the IDEA's jurisdiction. He was given contact information for the Office of Civil Rights, which does have jurisdiction to investigate complaints of retaliation.

The documentation showed that the student had two IEPs valid during the 2023-24 school years. The first was built on October 11, 2022 and the second was built on October 2, 2023. Both IEPs include a BIP with a Crisis Plan which is to be implemented when the student begins to demonstrate elopement behavior.

Heather Christner reported that she is working on getting her certification as an applied behavioral analyst and is supervised by Pam Sharping, BCBA to conduct a functional behavioral assessment and develop a BIP for the learner. The documentation shows that Ms. Christner was supervised and given feedback a total of 25 times in the 2023-24 school year.

District documentation showed that there were no incidents involving ESI during the first semester. The ESI incident occurred in both January and March. There were two incidents involving ESI use in April and three incidents of ESI in May.

Documentation showed that ESI was used on learners on a total of seven different occasions during the 2023-24 school year. In six of the incidents, antecedent/behavior/consequences (ABC) data charts showed ESI was used when the student became upset and acted aggressive by throwing a chair, attempting to throw a basket with objects on it towards his peers, flipping a table, and becoming physically aggressive towards himself and staff members. None of these incidents involve eloping, the target behavior in the student's BIP.

There is only one instance of an ESI being used in an elopement incident. This happened on April 8, 2024 while the student was being dropped off by the parent in the school building. According to the ESI report, the student immediately eloped upon arrival at school and attempted to leave the school grounds when students and teachers arrived at the building at 8:00 AM. Due to the timing and location of the eloping behavior, a safety issue for the learner is necessary to use ESI. Ms Christner reported that two #373 staff members and the mother participated in the capture of the student that morning and it was safe to return her to the school building. Ms Christner noted that the two staff members misused Crisis Prevention and Intervention (CPI) strategies and that these two staff members were reported to the administration.

The documentation also shows that the school team held a total of six staffings to review data for students during the 2023-24 school year and conducted an FBA as student behaviors began to increase. The student IEP team met a total of five times during the school year with the attending parent to discuss review of the student's IEP and BIP and to update strategies based on BIP data.

The parent reported that he did not believe USD #373 failed to implement student IEPs and BIPs during the 2023-24 school year. The parent said he was pleased with his participation in the IEP team process and believed that the school staff appreciated his input as a team member. The parent expressed awareness that there are situations involving student safety

and others that may require the use of isolation and/or restraint to keep everyone safe. He was pleased that staff were trained to intervene appropriately with the student.

Conclusion

Federal regulations in 34 C.F.R. 300.324(a)(2) require that the IEP team consider using positive behavioral interventions and support, and other strategies, to address any behavioral barriers to the child's learning or the learning of others. This may include IEP objectives, special education services, and/or a behavioral intervention plan (BIP). In this case, interviews and documentation show that the student has two IEPs in effect during the 2023-24 school year and that both include a BIP and a crisis plan. Based on the above, there is evidence to support a finding that USD #373 considers the use of positive behavioral interventions and support and other strategies to address the target student elopement behavior when developing the student's IEP in the 2023 24 school year.

Federal regulations in 34 C.F.R. 300.323(c)(2) require school districts to ensure that special education and related services are made available to the child pursuant to the child's IEP. In this case, the allegation is that the student's special education teacher failed to implement the student's BIP which resulted in improper use of ESI methods. However, documentation shows that six out of seven instances of ESI use are not the result of targeted behavior of elopement of BIP. Only one instance of ESI was found to have occurred due to the student's elopement. This elopement occurred upon arrival at the school building and ESI was used in that case to keep the student safe instead of implementing BIP. Based on the above, there is clear support for a finding that ESI use during the 2023 24 school year is not the result of a failure to implement the student's IEP.

Federal regulations in 34 C.F.R. 300.324(b)(1) require school districts to review and revise the IEP, as appropriate, at least annually to determine whether annual goals for students are achieved; to consider the results of any re-examination or any information provided by the parent; and to meet the expected needs of the child or other things. In this case, the student's annual IEP was reviewed and revised on October 2, 2023 within 365 days of the previous IEP dated October 11, 2022. Furthermore, documentation shows the IEP team, including the parent, met a total of five times during the 2023-24 school year to discuss data related to the student's FBA, BIP, and ESI situations. Based on the above, there is evidence to support that USD #373 reviewed and revised the student's IEP, as appropriate, during the 2023-24 school year.

The allegation that the district failed to implement the student IEP, specifically the behavior intervention plan (BIP), *is not substantiated*.

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 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)