

KANSAS STATE DEPARTMENT OF EDUCATION
SPECIAL EDUCATION AND TITLE SERVICES
REPORT OF COMPLAINT
FILED AGAINST
UNIFIED SCHOOL DISTRICT #107, ROCK HILL PUBLIC SCHOOLS
ON AUGUST 12, 2024

DATE OF REPORT: SEPTEMBER 17, 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 Beloit Special Education Cooperative provides special education services to the district. In the remainder of the report the Beloit Special Education Cooperative will be referred to as the “cooperative” or the “coop.” The district accessed an attorney during the investigation and in the report, Ms. Tammy Somogye will be referred to as the “district attorney.”

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 August 12, 2024, and the 30-day timeline ended on September 12, 2024. On September 11, 2024, the investigator requested an extension due to personal illness and received an extension revising the timeline to end September 17, 2024.

Evidence Reviewed

During the investigation, the Complaint Investigator Dr. Donna Wickham reviewed all evidence and documentation, which was provided by both the District and the Parent. All evidence submitted was reviewed; some evidence was older than twelve months and used for context rather than investigation of the issues. The evidence listed below was used in consideration of the investigation.

Additionally, the Investigator contacted the district via the district attorney and parent several times by phone and email to clarify evidence. The Investigator emailed with the mother by phone on August 16 August 19, and September 5, 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 scheduled on August 29, 2024 with Christie Gerdes, Special Education Director, Beloit Special Education Cooperative, Amy McDill, Special Education Teacher along

with Tammy Somogye the District's Attorney, was cancelled by the investigator due to personal illness. It was finally completed via email questioning between August 30, 2024 and September 3 2024 due to the investigator illness. The following documentation and information were used in consideration of the issues:

- Email from school psychologist to special education director of cooperative (2023-2024 school year), assistant director of special education, principal, special education teacher, occupational therapist, speech language pathologist, English teacher, science teacher, cooperative transition coordinator, and coop professional staff, dated March 21, 2023 at 7:55 a.m. Multidisciplinary Team Report dated March 27, 2023, including parent concerns dated March 27, 2023
- Individualized Education Plan dated April 19, 2023
- Email between special education teacher and school psychologist dated September 8, 2023 between 6:50 a.m. and 7:09 a.m.
- Email among special education director, principal, special education teacher, superintendent, school psychologist and speech and language pathologist dated between March 19, 2024 at 4:01 p.m. and March 22, 2024 at 10:24 a.m.
- Email among special education teacher, business teacher and English teacher dated March 25, 2024 between 10:38 a.m. and 1:41 p.m.
- Email between parent and special education director dated between April 5, 2024 at 9:53 p.m. and April 8, 2024 at 3:16 p.m.
- Individualized Education Plan dated April 9, 2024
- Parent concerns written document dated April 9, 2024
- District response received August 23, 2024
- Email from district's attorney to investigator dated September 3, 2024 at 11:58 a.m.
- Email from parent to investigator dated September 15, 2024 at 10:01 p.m.

Background Information

The student was a junior during the 2023-2024 school year where he was 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 received special education and related services for speech language and psychological services. The student is no longer enrolled as a student in the district.

This complaint addresses the district's obligation to provide related services to the parents and conduct a functional behavior assessment for the student.

Issues Investigated

1. Did the district offer parent counseling and training as a related service to the complainant or any other parents the complainant asked during the 2023-2024 school year?
2. Did the district develop appropriate services for the student's ADHD by conducting an FBA for work refusal or distraction during the 23-24 school year?

Issue One

Did the district offer parent counseling and training as a related service to the complainant or any other parents the complainant asked during the 2023-2024 school year?

Applicable Law

Federal regulations at 34 C.F.R. §300.34(c)(8)(i)(ii)(iii) and Kansas Regulations at K.A.R. 91-40-1(ww) define parent counseling and training' in three ways, 1) Assisting parents in understanding the special needs of their child; (2) providing parents with information about child development; and (3) helping parents to acquire the necessary skills that will allow them to support the implementation of their child's IEP or IFSP.

Analysis: Findings of Fact

Issue One was both an individual complaint on behalf of the complainant/student and a systemic complaint. On August 23, 2024, the district responded in their response that parent counseling and training is considered and will be provided when students' needs require this related service. They further stated that they have not been informed of additional parents who were not offered parent counseling and training. The investigator requested that the complainant provide additional information to fully investigate the systemic complaint, and the parent replied on September 5, 2024, at 2:16 p.m. that "I reached out to these parents but have not heard back from them. You can just investigate for just myself." As such this issue will be investigated specifically to this child and additionally to determine if the procedures and practices are in place in the district to implement the regulation for other students in the district.

The Parent alleged that the district did not offer parent counseling and training as a related service to the complainant. She stated the district should have offered this service. "There has been nothing but a power struggle over [Student's] Education. I believe a lot of the disagreements could have been avoided if the 'TEAM' had worked with us and explained the reasoning of the way they wanted to do things. Instead, I was turned into DCF for interfering with my Boy's education. This was only information the school staff would know."

In a clarification of the complaint on September 5, 2024, at 2:16 p.m. the complainant wrote in an email, "I do not want anything regarding this complaint, I cannot go back in time. Had they

offered parent support or training, perhaps the last year would not have been such a nightmare for our family. I guess more training would help.” Further, “They made sure to put staff support in [student’s] April 23/24 IEP. They didn’t even offer any to the parent. The [special education director] asked if I wanted someone from Families Together to attend the IEP Meeting on April 9, 2024. That was the only thing ever offered.”

The District responded that parent counseling and training must be included in an IEP when it is necessary for the student to receive a free and appropriate public education (FAPE). The IEP team did not identify parent counseling and training as a service required to provide the student FAPE in either IEP during the 2023-2024 school year. The district responded that several factors support the conclusion that parent counseling and training was not necessary. First, at the mother’s request the student completed all of his work at school. Second, there was frequent communication between district/coop personnel about the student, including the student’s mother providing regular feedback about various aspects of the student’s schooling. Next, there was no indication that any behaviors were happening at home that would have triggered the need for the student’s mother to receive assistance or training regarding how to handle them. In regard to district practices and procedures the coop and district state that parent counseling and training is considered and provided when students’ needs require this related service.

The April 29, 2023 and April 9, 2024 IEPs do not include parent counseling and training as a supplementary service.

The parent wrote in an email to the investigator on September 15, 2024 at 10:01 p.m. “I feel it (not getting parent counseling or training) greatly impacted [student] receiving FAPE. The school chose to turn [student’s] education into a power struggle, by doing this his needs were not met. I did not realize that parent training or counseling was something the school should offer until towards the end of the year. Had this been offered perhaps I could have explained my thoughts for [student’s] needs in a different way so that everyone understood what my concerns were, not that I was interfering in his education.”

The April 9, 2024 IEP staffing notes referenced a document written by the parent and appended to the April 9, 2024 IEP that referred to concerns about parent involvement. This document states, “We know that the DCF report came from the school, just by what was said in the report. If anyone has an issue with me holding the staff accountable, please let me know. This is [student’s] future. When he is not provided the instruction to learn the skills he needs, it only lessens the chance for [student] to successfully live independently.”

The district stated that the school-based IEP team has not considered recommending parent counseling or training because “the parent had a very good understanding of her child’s needs and offered suggestions to school staff on accommodations and how to meet her child’s needs. She presented information from various resources (doctors, therapists, previous services on IEPs, resources from websites regarding her child’s disability) to the IEP team for

their consideration and engaged in multiple conversations regarding programming and planning for services to meet the needs of her child. The team did not have any reason to believe that the parent required additional counseling or training in order to understand her child's disability or how it impacted him on a daily basis in the school environment and parent did not request parental counseling or training, so there was not any specific discussion about this topic during IEP meetings." As such, the district responded that the IEP team focused on the student's needs and developed a plan to meet his needs.

On September 3, 2024 at 11:38 a.m. in an email to the investigator the district responded to the question, Under what conditions or circumstances do you recommend parental counseling or training as a special education service, "Parents are provided detailed information regarding their child's disability in multidisciplinary evaluation reports which encompass summarizing testing results, eligibility criteria for the state of Kansas, impact of the child's disability on their academic achievement and performance, and recommendations for school supports/services. Parent counseling and/or training would be considered and/or recommended when consistency between home and school is necessary in order to provide appropriate programming and for the student to make progress on IEP goals. A non-exhaustive list of examples include: providing some instruction in American Sign Language if the student is hearing impaired, working with parents on how to utilize an FM trainer that the student uses at school or at home, training parents how to use different AAC devices for communication that the student uses at school or at home, providing cane training resources to assist a visually impaired student in her home and the community, and training parents to assist with generalization of skills in non-school environments. In addition, a team would consider parent counseling or training upon parent request."

Conclusion

There is no requirement in the IDEA that an IEP team offer everything that is available through special education. What is required is that the IEP team offer a free appropriate public education (FAPE). That is, the IEP team must offer only the special education and related services that the team believes the child needs. In this case, the evidence does not show that the parents needed assistance in understanding the special needs of their child, information about child development or skills to support the implementation of the student's IEP (34 C.F.R. §300.34(c)(8)(i)(ii)(iii)) and (K.A.R. 91-40-1(ww)). So, not offering parent counseling or training during the IEP meeting when there was nothing that indicated parent counseling or training was necessary in order for the child to make appropriate progress does not constitute a violation. According to the district they stated they would consider offering parent counseling or training if the parent requested the service, but no evidence was found that the parent specifically requested parent counseling or training.

As a part of interviewing the district about their practices and procedures for including parent counseling or training as a related service they stated that they do not routinely offer this

related service for families of students with IEPs, but instead consider it on an individual basis when any one of the three conditions outlined in IDEA and Kansas regulation are identified with the IEP team.

Therefore, *it is not substantiated* that USD #107 did not offer parent counseling and training as a related service to the complainant or any other parents the complainant asked during the 2023-2024 school year.

Issue Two

Did the district develop appropriate services for the student's ADHD by not conducting an FBA for work refusal or distraction during the 23-24 school year?

Applicable Law

Federal regulations at 34 C.F.R. §300.304(c)(6) and (7) state that when evaluating a child with a disability under §§300.304 through 300.306, the evaluation must be sufficiently comprehensive to identify all of the child's special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified, and further the assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child are provided.

Federal regulations at 34 C.F.R. §300.324 state that in developing each child's IEP, the IEP Team must consider the strengths of the child, the concerns of the parent for enhancing the education of their child, the results of the initial or most recent evaluation of the child, the academic, developmental, and functional needs of the child and in the case of a child whose behavior impedes the child's learning or that of others, consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior.

Analysis: Findings of Fact

The Parent alleged that there are numerous emails that state the student had refused to work or was frequently distracted. There was no correspondence with parents about this issue, nor was an FBA suggested or completed. These emails "had a feeling" that the student was just being lazy rather than struggling with the work.

The District responded that the IEPs were developed with goals and accommodations to address work refusal and distraction associated with ADHD based on the ongoing assessment and the most current reevaluation, and therefore a functional behavior assessment was not needed.

The Multidisciplinary Team Report dated March 27, 2023, documented that the student's medical diagnosis of ADHD, predominantly inattentive type was confirmed during June 2020. The IEPs dated April 19, 2023 and April 9, 2024 indicate the student's secondary eligibility category of special education was other health impaired due to the ADHD.

The most recent Multidisciplinary Team Report, dated March 27, 2023 noted that there was evidence of a severe discrepancy between the performance in mathematics, communication, transition/student skills, and executive functioning. Additional comments in the report addressed not staying on task during English and math class observations. Suggested instructional strategies were noted throughout to maintain or regain attention to academic work. In the staff concern section, "figure out how to help get himself focused. He gets distracted by activities going on in the room and loses track of what he is working on. This often keeps him from getting his work completed in a timely fashion." was documented. The student's ability to complete work tasks appropriately and/or in a timely fashion was evaluated to be clinically elevated. The student's ability to begin an activity was clinically elevated as rated by the parent and one of three teachers. The student self-evaluated himself as "I often get distracted." And finds it hard to concentrate the whole time when sitting in a long class or meeting. And his mother stated he is inattentive. The special education and general education teachers completing the evaluation did not identify distractibility or work refusal as concerns.

The IEP dated April 19, 2023 listed staff concerns derived from the March 27, 2023 reevaluation as: when the student is off task and a teacher is trying to help him with strategies to get refocused, he views these prompts as "bugging him." His special education teacher stated she would like him to improve his focus and getting work done on time. The parent indicated that the work gets overwhelming and he needs assignments that match his learning style. "Formal cognitive testing found that it is possible his focus/attention to task may have led to the variance of cognitive testing scores." Functionally, it was noted that the primary weakness/concern for the student was figuring out how to get himself focused. The special education teacher stated, "he gets distracted by activities going on in the room and loses track of what he is working on. This often keeps him from getting his work completed in a timely fashion."

The April 9, 2024 IEP documented the following data collection to develop the annual IEP: input from classroom teachers and student, updated transition assessment, Fastbridge scores, the BRIEF 2 for executive functioning, parent concerns and strengths. The IEP indicates that two of the student's goals are impacted. First, the student's independent ability to focus and complete math activities, and implement executive functioning skills are impacted and will be met in the IEP through: general education supports, accommodations, modifications, supports for school personnel, assistive technology, supplementary aids and supports and positive behavioral supports.

The April 9, 2024 IEP included accommodations to address focus and work refusal, including alternate place to complete work, use of personal headphones (to improve focus during learning activities), a visual timer (to assist with task completion), planner (to assist with time management), breaking down assignments to daily task requirements (assist with time

management), and checking for understanding (to ensure the student knows how to start assigned work).

The parent wrote in an email to the investigator on September 15, 2024, at 10:01 p.m. that there was never a discussion with the district about conducting an FBA for distraction or work refusal because the special education teacher “refused to correspond with me.” The parent further wrote, “[student] was able to focus better in all of his classes, except for the classes in [special education teacher’s] room. Which were Math, Study Skills and Social Skills. If an FBA would have been done, we could have narrowed down the issues he was having in these classes.”

The parent stated in her email to the investigator dated September 15, 2024, at 10:01 p.m. that the student told his mother when asked about any accommodations or strategies that allowed the student to keep focus that, “really did not have any strategies to help him stay focused. He tried his headphones, but [special education teacher] had an issue with him taking too long to pick songs etc.”

Conclusion

In determining if the district had an obligation to conduct an FBA for work refusal or distraction the investigation examined if the March 27, 2023, Multidisciplinary team evaluation was sufficiently comprehensive to develop an IEP for the student. Based on report and assessment used in preparation of the April 19, 2023 IEP and April 9, 2024 IEPs it is found that the two IEPs implemented during the 2023-2024 school year appropriately and adequately identified student strengths, parent concerns, incorporated most recent evaluation, assessment and did not indicate additional assessment was needed to address the work refusal and distraction. Therefore, *it is not substantiated* that USD #107 failed to conduct an FBA for work refusal or distraction during the 23-24 school year.

Summary of Conclusions/Corrective Action

ISSUE ONE: A violation of 34 C.F.R. §300.34(c)(8)(i)(ii)(iii) and (K.A.R. 91-40-1(ww) was not found, based on the facts above. Corrective action is not required.

ISSUE TWO: A violation of 34 C.F.R. §300.304(c)(6) and (7) and 34 C.F.R. §300.324 was not found, based on the facts above. Corrective action is not required.

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)