

KANSAS STATE DEPARTMENT OF EDUCATION
SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT
FILED AGAINST
UNIFIED SCHOOL DISTRICT #469
ON AUGUST 27, 2024

DATE OF REPORT: SEPTEMBER 26, 2024

This report is in response to a complaint filed with our office on behalf of a student, -----, by his parent, ----- . In the remainder of the report, the student will be referred to as “the Student” and the parent as “the Parent.”

The Complaint is against USD # 469 Lansing Public Schools. In the remainder of the report, the “School,” the “District,” and the “local education agency (LEA)” shall refer to USD #469.

The Kansas State Department of Education (KSDE) allows a 30-day timeline to investigate a child complaint. A complaint is considered to be filed on the date it is delivered to both the KSDE and the school district. In this case, the KSDE initially received the complaint on August 27, 2024, and the 30-day timeline ended on September 26, 2024.

Investigation of Complaint

Tania Tong, the Complaint Investigator, interviewed the Parent by video call on September 20, 2024. District staff were interviewed on September 19, 2024.

The Complaint Investigator also received emails from the Parent and the District between September 22, 2022 and August 9, 2024.

In completing this investigation, the Complaint Investigator reviewed documentation provided by the Parent and the District. Although additional documentation was provided and reviewed, the following materials were used as the basis of the findings and conclusions of the investigation:

From the District:

1. Complaint Response, 09/06/24
2. Individualized Education Program (IEP), 03/24/23
3. Amendment IEP, 02/15/24
4. PWN, 02/13/24
5. PWN, 04/22/24
6. Request for Consent, 04/22/24-04/25/24
7. Evaluation/Eligibility Team Report Reevaluation, 03/31/23
8. Meeting Notes, 10/27/23

9. Contact Log, 08/16-09/05/24
10. Instruction Log, 06/03-06/27, no year

From the Parent

1. Email, re: services for 24-25 school year, 08/09/24

Background Information

This investigation involved a ninth-grade student who received homebound instruction in the District. The Student is currently eligible for special education or related services as a child with an Autism Spectrum Disorder disability per the Individuals with Disabilities Education Act (IDEA). The Student has been on a homebound instruction plan since 2023 due to the disagreement between the District and the Parent about the appropriate placement. Homebound instruction was delivered in the morning during the 2023-24 school year.

The Student Services Director indicated in an interview that the Student had been with the District for three years and, during his first year, exhibited behavioral challenges that led to various placement changes, starting from the least restrictive environment (LRE) in a Special Education setting with inclusion to a more restrictive, self-contained setting. The escalating behavior, which included physical aggression, elopement, property destruction, disrobing, urination, throwing objects, physical contact with staff and students, and self-harm, ultimately led to homebound instruction toward the end of the Student's first year in the District. However, the Director of Student Services described that there had been significant progress with the homebound instruction and the Board-Certified Behavior Analyst (BCBA) Team's plan, and the Student is ready to return to a self-contained program in the District.

Issue One

USD #469, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to implement the Student's IEP at the beginning of the 2024-25 school year. 34 C.F.R. 300.323(a) and K.A.R. 91-40-16(b)(3).

Positions of the Parties

The homebound instruction was executed in the morning during the 2023-24 school year. During the 2024-25 school year, the District sent an afternoon schedule as opposed to "the status quo," which interfered with the Student's afternoon therapy sessions. (Parent Complaint, August 27, 2024)

The District's position is that they attempted to provide homebound services under the Student's current IEP. The District acknowledged that due to internal miscommunication, the District did not send service providers to the home on the first two days of the school year. Since then, the District has attempted to provide services daily, but they have been denied access to the Student. (District Response, September 6, 2024)

Findings of the Investigation

The following findings are based on a review of documentation and interviews with the Parent and District staff.

1. The Student is 13 years old, in 9th grade, and was scheduled to receive homebound instruction for the 2024-25 school year.
2. The Student is eligible for special education as a student with Autism.
3. On February 15, 2024, an IEP meeting indicated the Student had IEP goals for communication, motor, sensory, social-emotional, reading, math, and written language. The IEP also indicated:
 - a. Student strengths indicated the Student used total communication to communicate their basic wants and needs. "The Student uses words, phrases, gestures, body language, and a speech-generated device (SGD) for communication. ... When given a visual model, [the Student] is able to correctly copy numbers in regular lined paper ... [The Student] is a joy to be around. [The Student] is a fun student and has high energy."
 - b. Accommodations included visual models, access to a scribe, access to sensory strategies, decreased visual and auditory input, priming of upcoming transitions, access to prompts, manipulatives for math, and read-aloud supports.
 - c. Support for school personnel included a team meeting every other week for 30 minutes, starting on 12/11/2023 and ending on 04/16/2024.
 - d. Assistive technology included an AAC device provided weekly to the Student.
 - e. The Educational Placement and Special Education Services section described the range of services tailored to the Student's specific challenges, including occupational therapy consultations to address self-regulation and fine motor skills impacted by sensory processing difficulties. For communication needs, the Student received both homebound and pull-out speech-language therapy. Due to significant behavior concerns and low academic skills, the Student received direct instruction in behavior, life skills, and academics. This instruction was provided both in a homebound setting and in a specialized educational setting, with varying frequencies and durations throughout the school year.
 - f. The potential harmful effects included "time away from same-aged peers in this setting."
4. According to the Student Services Director, the Student's homebound instruction included three hours of daily instruction from a Special Education teacher and paraprofessional, with virtual support from a BCBA Team that utilized video recordings and headsets for real-time feedback and communication. One time each week, the Student received 30 minutes of speech-language services.
5. The Student did not receive a full day of services. The Student's services were "based on what [the Student's] tolerance and stamina are related to how long [the Student] can participate and engage in instruction."

6. The Student Services Director indicated that the IEP Team met to review and revise the Student's IEP on the following dates: August 17, 2023, October 27, 2023, December 11, 2023, January 12, 2024, and April 12, 2024.
7. A Teacher Log with a date range of June 3, 2024, through June 27, 2024, indicated the Student received ESY instruction in reading, writing, math, and behavior support on average for 3 hours a day for 14 days.
8. According to a Teacher Log with a date range of August 16, 2024 through September 5, 2024, the teacher went to the home to deliver instruction on 13 different days during the date range, arriving before 12:30 p.m. The Parents did not answer the door on any occasion.
9. According to a Response to Formal Complaint Letter dated September 6, 2024, the Director of Student Services indicated, "Due to [a] miscommunication internally, the [D]istrict did not send service providers on the first two days of the school year. August 14th was the first day of school at [the District High School] for freshmen only. School personnel have attempted to provide services every day since then and have been denied access to the [S]tudent."
10. In an interview, the Parent shared that the District maintained a homebound plan with a morning schedule for the Student throughout the summer. For the start of the 2024-25 school year, the District provided an afternoon schedule, which the Parents disagreed with, citing the Student's poor performance in the afternoon and therapy sessions that the Student needed to attend in the evening. The Parent indicated that they and their attorney had indicated that this schedule was unsuitable.
11. On August 9, 2024, the Parent's Attorney emailed the Director of Student Services and the Parent, "I have spoken with my clients, who have the following concerns":
 - a. "Regarding the proposed 1-4 p.m time:"
 - i. "[The Student] has [a] long[-]standing therapy appointment in the afternoon."
 - ii. "[The Student] is at [their] best for academic learning in the morning."
 - iii. "The proposed hours also affect after[-]school obligations and opportunities for [their sibling]."
 - b. "Regarding the new teacher: please provide information and an introduction: credentials, whether [they are] part of the District's staff or a contract employee."
 - c. "The plan for addressing the 2500+ hours of lost education time." "Parents have shared their long-standing concerns about [the Student's] needs, including training of staff, interaction with peers, and accelerated times to address the education time lost. To that end, they are renewing their request for [the Student's] placement at [the Private Academy]. That placement provides the FAPE to which [the Student] is entitled and addresses both the educational hours deficit and provides additional support for critical staff training for delivery of [the Student's] FAPE."

12. The Student Services Director indicated that the time the School had available to serve the Student was from 1:00 p.m. to 4:00 p.m. and that last year, they provided services from 8:00 a.m. to 11:00 or 8:30 a.m. to 11:30 a.m. The paraprofessional they had scheduled for the afternoon time slot worked with the Student during the extended school year and knew the Student well, "... we've got our new teacher trained up as well. So we are ready, but they don't answer the door." The Student Services Director understood that the Parents had some schedule conflicts with the afternoon time slot. The Parents indicated that the Student has afternoon therapy services and their other child's activities may affect their availability. The Student Services Director mentioned that regarding the afternoon time slot, "We don't have another time available. So that is the time that we currently have available with the staffing that we have." The Attorney for the District added that the District has offered to provide services in the morning in the self-contained program, and the Parent had refused this option.
13. When asked about not answering the door when the teachers arrived at 1:00 p.m. to provide home instruction, one of the Parents indicated, "Yeah ... [the Relative] has heard ... somebody ring the bell." One of the Parents indicated that the Student is at home from 1:00 p.m. to 4:00 p.m.
14. The Parents shared in an interview that the Student has two therapy sessions in the afternoon on Mondays and Wednesdays, and tutoring for sign language on Tuesdays and Thursdays. The Parents shared that the therapies begin at 5:00 p.m., and they leave the house at "4:20ish." The Parents indicated that the Student does not do well in the afternoon, that the Student is excited and unfocused, and that having instruction in the afternoon until 4:00 p.m. and then going to therapies does not work for the Student.
15. On September 6, 2024, the Director of Student Services reported in a Response to Formal Complaint Letter, "the [D]istrict is following the [S]tudent's current plan. ... The IEP [T]eam met on several occasions since the current plan was agreed upon, but [sic] new plan has been agreed to or consented to. ... the [T]eam met on April 12, 2024." Meeting notes indicated the Parents refused to consent to the change offered in the plan.

Applicable Regulations and Conclusions

According to 34 C.F.R. 300.323(a) and K.A.R. 91-40-16(b)(3), each school district must make FAPE available to all eligible children beginning on their third birthday and continuing until a reevaluation indicates the Student is no longer eligible and the parents consent to termination of services. An IEP must be developed and implemented within ten school days after written parent consent is granted for the services in the IEP.

At the beginning of the 2024-25 school year, the District attempted to provide homebound instruction to the Student, in compliance with 34 C.F.R. 300.323(a) and

K.A.R. 91-40-16(b)(3). The District's proposed afternoon instructional period conflicted with the Parents' preference for morning instruction and scheduled therapy appointments. The

Student's IEP did not require special education services be provided in the Student's home in the afternoon. The scheduling of services is an administrative function of the District. District personnel reported being unable to access the Student during the scheduled afternoon sessions. Despite the disagreement between the Parents and the District on the scheduling of the instructional sessions, the District fulfilled its obligation to offer services in accordance with the Student's IEP.

Based on the foregoing, according to IDEA and Kansas special education regulations, *it is not substantiated* that the District failed to provide a FAPE to the Student.

Issue Two

USD #469, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to convene an IEP meeting and obtain parent participation before refusing parent-requested special education. 34 C.F.R. 300.320 and K.A.R. 91-40-21.

Positions of the Parties

The Parents proposed an alternative placement at the Private Academy. According to the Parent, the District promised to discuss the Parent's proposed placement at an IEP meeting. The Parent alleged the District reached a decision to deny the placement before the IEP meeting convened. (Parent Complaint, August 27, 2024)

The District maintained that they adhered to the Student's existing IEP. Although the IEP Team met multiple times, most recently on April 12, 2024, no new plan had been agreed upon or consented to. (District Response, September 6, 2024)

Findings of the Investigation

The following findings are based on a review of documentation and interviews with the Parent and staff in the District.

1. According to meeting notes dated October 27, 2023, there was a discussion regarding the Student's reintegration into the school building. The Director of Student Services indicated they would send the data points to the Parent to give them an idea of how the integration plan was going. The Attorney for the Parent explained that the Team needed to be better about communicating, and the Parent "need to know about schedules and the process of integration."
2. A Prior Written Notice (PWN), dated February 13, 2024, indicated the Team met to review the special education and related services for the Student and the appropriate educational placement to provide special education and related services identified in the Student's IEP. "The IEP [T]eam proposes for [the Student] to begin in transition from homebound to receive services in a special education classroom. The [T]eam proposes a five-week transition plan starting with an hour in the building each day and increasing

the time by 30 minutes each week. Homebound services would decrease weekly as special education classroom minutes increase until [the Student] attends for 3 hours in the special education classroom setting. Each week, the sum of minutes is the homebound and special education each day will equal 180 minutes.”

3. In an interview, the Parent shared that the original transition plan involved gradually reintroducing the Student to the School through incremental visits. However, this plan was scrapped in favor of a direct transition to what the Parent described as “seclusion” in the School. The Parents and the private BCBA disagreed with this change, citing the previously agreed-upon plan. According to the Parent, the District remained firm on their decision, leading to a stalemate.
4. Staffing Notes dated April 12, 2024, indicated, “Proposed placement/services: remain receiving services in the homebound setting and change to services within the high school building in August. Discussion of [the Private Academy].”
5. The Parent described in an interview that the Student’s doctor recommended “for [the Student] to be sent to an alternative placement, a private placement at [the Private Academy]. [The doctor] put that in writing, and we submitted that to the School and requested for them to send [the Student] to [the Private Academy]. And they said no, that they would not. They said initially that it’ll be discussed by the IEP [T]eam during the IEP meeting. So we went to the IEP meeting ... close to the end of the meeting, we asked, ‘What about our request for private placement?’ They said, ‘Well ... the [T]eam has decided against it.’ And I asked them, ‘Are the Parents part of the IEP [T]eam?’ They say, ‘Yes.’ I say, ‘So who and who decided against it.’ They wouldn’t answer me.”
6. Regarding the discussion about the out-of-district placement, the Student Services Director recalled, “It was a proposal by the Parents to initiate just the conversation about the out-of-district placement at this ... Academy. ... Our proposal had been, we worked on it for a while ... was for [the Student] to come back into our school environment because the data suggests that [the Student’s] behavior is under control. We have instructional control, and so the data supports coming back into the School. ... [The] prior written notices that we provided with the different proposals ... there was like a five or six- week plan that we were going to increase [the Student’s] time each week. It was to start out in the self-contained setting, and then we work our way to see how [the Student] transitions But the plan was to set up the School as close as possible to what the homebound looks like with just [the Student] and the staff working together because that was successful and the behavior was managed. ... So we propose for that five, six-week plan to introduce [the Student] back into the school setting because the data shows that our homebound works and that we’re ready for that next step, but they don’t like starting out in the self-contained setting. So they brought that proposal for the out-of-district placement to us at our meeting in April.”
7. A PWN dated April 22, 2024, indicated, “The [T]eam considered the least restrictive environment and potential harmful effects. The special education classroom is a less restrictive environment as compared to home bound [sic], but [the Student] will still have limited access to peers. Considering safety and helping [the Student] adjust to the

new environment, limiting access to peers is important but necessary for now, but being in the school building will bring [the Student] closer to supervised, structured interactions with peers and ultimately being able to work toward transition back into special education and general education classroom and environments.”

“The [T]eam will continue to review behavior data to determine the appropriate placement for [the Student] to receive special education services. The [T]eam will consider the continuum of special education services to include an alternative program outside of school district boundaries if the data indicates this level of service/support is needed and would consider and meet with [the Private Academy] at that time. The [T]eam will meet weekly to discuss behavior data and plan to incorporate inclusion opportunities into [the Student’s] school day.” The Parent did not consent to the special education placement specified in the PWN.

8. The Parent shared in an interview, “They’re insisting on bringing [the Student], transitioning [the Student] back to school but to a seclusion in the high school, not even in the middle school. ... we also rejected that idea. So we remained on the homebound plan, but they are not executing as expected.”
9. The Student Services Director shared in an interview that “Our response is that we make data-based decisions, and our data suggests that [the Student] is ready for reentry into the School setting. If the data were to show differently that the behaviors were ramping up and we weren’t successful, then we would be able to try that. But, we didn’t have the data to support the need for an out-of-district alternative placement at this time. And also that we will consider that with the data to support it.”
10. The Student Services Director believed that the Parents viewed the self- contained setting as “solitary confinement” and wanted their child to be included with peers as much as possible. The School explained the new High School’s setup, which allowed for easy transitions between the self-contained setting and inclusion based on the Student’s behavior.
11. The Parent indicated in an interview that they asked again about sending the Student to the Private Academy when they received the afternoon homebound schedule for the 2024-25 school year. According to the Parent, the School declined that option without reason. The Parent described that the first time the family asked about the out-of-district placement, the School indicated that they didn’t know much about the program. According to the Parent, the second time they asked about the out-of-district placement, the School said that “they have similar services as [the Private Academy].” The Parent disagreed and indicated that at the Private Academy, the Student would not be in “seclusion.”

Applicable Regulations and Conclusions

According to 34 C.F.R 300.320 and K.A.R. 91-40-21, in determining the location of special education and related services, the IEP team must consider the continuum of educational placements necessary for the IEP. The school must ensure that each student's parents are

members of any group that makes decisions on the educational placement of their child. The placement decision must be made in conformity with the requirement of providing services in the LRE. The educational placement is to be determined at least annually and based on the Student's IEP.

The District proposed a gradual reintegration plan from homebound instruction to classroom instruction at the School for the Student, starting with one hour in the School building and increasing incrementally, which demonstrated consideration for the LRE. The District issued PWNs detailing the proposed changes to the Student's placement and services, ensuring the Parent was informed and had an opportunity to participate in the decision-making process. The District's decision to transition the Student back to the school setting was based on data indicating improved behavior and instructional control, which aligned with the requirement to make placement decisions based on the Student's individual needs. Although the District ultimately rejected the Parent's request for an out-of-district placement at the Private Academy, they considered it and stated they would reconsider if data supported the need.

Based on the foregoing, according to IDEA and Kansas special education regulations, *it is not substantiated* that the District failed to involve the Parent in the decision-making process regarding the Student's placement.

Complaint Investigator

Tania Tong, Licensed 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)