

KANSAS STATE DEPARTMENT OF EDUCATION
SPECIAL EDUCATION AND TITLE SERVICES
REPORT OF COMPLAINT
FILED AGAINST
UNIFIED SCHOOL DISTRICT #469 LANSING PUBLIC SCHOOLS
ON SEPTEMBER 3, 2024

DATE OF REPORT: OCTOBER 3, 2024

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

The complaint is against USD # 469. In the remainder of the report, USD #469 will be referred to as “the district”, “the local education agency (LEA)”, or “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 September 3, 2024, and the 30-day timeline ends on October 3, 2024.

Evidence Reviewed

During the investigation, the Complaint Investigator, Gwen Beegle, reviewed all evidence and documentation, which was provided by both the district and the complainant(s). Because the parent alleged that the district had failed to provide required special education service time to other students in addition to the student in this case, a systemic inquiry into this issue was conducted to determine if the issue identified by the parent affected more children in the school. The parent was interviewed to clarify the complaint on September 3, 2024 and interviewed again on September 30, 2024.

Interviews with Tyler Hays (Assistant Principal), LaKrystal McKnight (Special Education Coordinator) and Jennifer Kolb (Principal) were held on September 10, 2024. Interviews with the prior year school staff held on September 10, 2024 included: Lori Geise (Special Education Case Manager), Nevada Runnebaum (Paraprofessional) and Emily Pendergras (Paraprofessional). Interviews with the current year teaching staff held on September 10, 2024 included: Brandi Lynn (Third Grade Teacher), Bishama Samuel (Paraprofessional), Geovanni Popoca (Special Education Case Manager), and Ellie Schwinn (Social Behavioral Skills Special Education Teacher). Emails were exchanged between the district and the investigator from September 6, 2024 to September 25, 2024.

In addition, the following documentation and information were used in consideration of the issue:

1. The student's evaluation, dated January 6, 2022
2. The student's IEP, dated December 7, 2023
3. Student Progress Report, with entries dated December 15, 2023, March 8, 2024, April 23, 2024 and May 22, 2024.
4. Para PLC Meetings, 2023-24 School Year
5. TASN Registered Behavior Technician (RBT) Training Application, dated May 24, 2024
6. Prior written notice for changes to the IEP (ESY) dated June 24, 2024, emailed to the parents on the same date, unsigned
7. Kindergarten, Second and Third Grade Service Delivery Schedule, undated
8. Speech Language Data Form, 2024-25 School Year, with entries beginning August 27, 2024 and ending September 10, 2024
9. Document: "K-5 SpEd Coordinator Project/ Systems/ Processes Planning" 2024-25 School Year
10. IEP Services/Support Log Grade 3 beginning August 14, 2024 and ending September 3, 2024
11. Lansing Elementary School Master Caseload List, dated August 8, 2024
12. Lansing Elementary School Master Schedule, 2024-25, dated August 20, 2024
13. Lansing Elementary School Paraprofessional Absences, 2024-25
14. Lansing Elementary School Student CG minutes, Kindergarten through Third Grade, 2024-25 School Year
15. Special Education Progress Reporting Periods, 2024-25 School Year
16. The district's response to the issues, dated September 13, 2024
17. Email from the district to KSDE and the investigator dated September 13, 2024 at 12:12 p.m.
18. Services: Updated Log (for the student) received September 24, 2024
19. Additional Requested Information dated September 25, 2024

Background Information

The student attends the third grade at the district's elementary school where he receives special education services in special education and general education settings. The student was identified with Autism Spectrum Disorder with cognition in the average range, primarily due to language delays and stereotype language at three years of age. Having attended a Tiny K and the district's preschool program prior to transitioning to kindergarten in January, 2022, the student's current IEP includes goals in language development and social skills, with the majority of the school day in the general education third grade classroom. A behavior

intervention plan, speech language therapy, extended school year (ESY) and transportation are included in the IEP.

Issues Investigated

Issue One

The USD # 469 in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to implement the student's IEP, specifically by providing the amount of special education and related services required by the student's IEP.

Because the allegation included the assertion of knowledge of this issue occurring in at least two grades in the school, the investigation included an inquiry into the lack of special education support in the general education classroom in the school.

Applicable Law

Federal/State statutes and regulations at 34 CFR 300.39 defines special education as specially designed instruction at no cost to the parent to meet the unique needs of a child with a disability. Further 34 CFR 300.320(a)(4) requires that the IEP include "a statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided to enable the child: (i) To advance appropriately toward attaining the annual goals; (ii) To be involved in and make progress in the general education curriculum. . . and to participate in extracurricular and other nonacademic activities; and (iii) To be educated and participate with other children with disabilities and nondisabled children. "

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. Federal regulations at 34 C.F.R. 300.503(a) require school districts to provide parents with prior written notice a reasonable time before they propose or refuse to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE (free appropriate public education) to a child who has or is suspected of having a disability. State regulations at K.A.R. 91-40-27(a)(3) require school districts to obtain parent consent before making a material change in services or a substantial change in placement. The Kansas Special Education Process Handbook clarifies a material change in services: "A change in the instructional methodology used to provide a service, even if the methodology is specified in an IEP, is not a material change in services. For example, a change to a strategy within a behavior intervention plan is a change in the instructional methodology, not a material change in services" (p.8).

Analysis: Findings of Fact

The parent alleged that last year, a paraprofessional brought it to the parent's attention that the para often left the student in the general education setting in order to provide services to other children. The parent alleged that she inquired about the practice and found it to be in place this year, depriving her child of needed special education support in the general education classroom and support to be dismissed to the bus or car pick up line appropriately.

The district responded that it acknowledged that mistakes had been made, depriving the student of special education service minutes in the general education classroom. "General education inclusion service minutes are impacted when staff absences occur. The beginning of the current school year has had days where multiple staff members have been absent on the same day. . . . When this occurs, our current practice is to prioritize student safety and cover the students with the most intensive needs and shuffle/rearrange the schedules of available staff.

The district response continued: "The needs hierarchy is individualized, and takes into account each student's independence level and adaptive skills to navigate the school environment safely, and level of disruptive social-emotional behavior exhibited by the student. General education teachers are provided a log to track/log missed minutes; this log is shared with the student's case manager and building administrators. Then, special education case managers monitor student progress toward IEP goals. When the student's progress report indicates that the student has continued to make progress and/or achieved their goals, the team then uses this data to inform decisions about Least Restrictive Environment; the student may no longer need the same level of special education inclusion support, and placement changes can be made at that time per the IEP team discussion and decision and ultimate parent consent. If progress monitoring data indicates the student is not making progress toward their IEP goals, the student is then prioritized in the intensive needs hierarchy when staff absences occur and staff schedules are shuffled/rearranged. Regarding the student in question, a log of missed minutes is [provided] for the current school year. Additionally, [the student's] last progress report, dated 4/23/24, indicated [the student] continues to make adequate progress towards his IEP goals; the next progress report is due to parents on 10/16/24. The IEP team will review [the student's] progress and determine the best placement for services and LRE based on the results."

The following findings are based upon a review of documentation and interviews with the parent and staff in USD #469.

The student's IEP dated December 7, 2023 includes the following goals (in brief): (1) communicate seven communicative functions (e.g. request objects, request/direct actions, request assistance, request, recurrence, request cessation, ask questions, express opinions, inform, protest, complain, etc.), (2) to return a greeting with unfamiliar adults and students, and (3) demonstrate appropriate play skills, peer relations, cooperative learning and

assertiveness. The student's behavior is supported by a positive behavior support plan and the IEP includes a functional behavior assessment. The student's IEP does not include reading goals, math goals, or health needs that impact his educational plan.

The student's IEP dated December 7, 2023 requires special education services in both the special and general education settings. In the special education setting (pullout): direct social skills instruction, 45 minutes, 5 days per week; attendant care for transitions, 10 minutes, 5 days per week; speech/language therapy, 20 minutes, 2 days per week, every 3 out of 4 weeks. In the general education setting (inclusion): electives (specials) 50 minutes, 5 days per week and inclusion in the classroom for social and behavior, 225 minutes, 5 days per week. The IEP also requires indirect speech/language consultation (15 minutes, every 4th week), assistive technology (speech generating device), special transportation and extended school year (ESY). Accommodations and modifications include a separate quiet setting for assignments, tests and assessments to process what is expected; access to a more restrictive setting, visual schedules, whole daily and individual task schedules.

The parents declined to send the student to ESY in the summer of 2024. The district emailed the Prior Written Notice (PWN) reflecting this service change to the parents dated June 24, 2024.

The district provided a summary of missed special education services in general education (inclusion) minutes as follows: August 19, 2024: 50 minutes. August 20-23, 2024: 50 minutes. August 26-29, 2024: left blank. September 3, 2024: 105 minutes.

The student's schedule, cross referenced with the paraprofessional absence schedule (through September 10, 2024) showed that the paraprofessional assigned to the student's third grade classroom was absent on August 19 and September 3, 2024. The paraprofessional assigned to assist the student for dismissal at the end of the day (3:00-3:10 p.m.) was not listed as absent; however, during interviews with the district, the district acknowledged that a different (new) paraprofessional had failed to properly dismiss the student at least one time since the beginning of the current school year.

In an interview with the current teaching team, the paraprofessional and case manager stated that the paraprofessional had been pulled several times to cover more intensive need classrooms and students since the beginning of the current school year. The investigator inquired to determine the extent to which this occurred in two ways. First, in the interview, the paraprofessional estimated that it had happened a few times each week since the beginning of school. Second, with a follow up email dated September 23, 2024 with a chart cross referencing all paraprofessional absences with the paraprofessional assigned to the student's general education setting. At times, the paraprofessional's services in the third grade classroom were replaced by other special education staff. The district reported that the paraprofessional who supported the student in the third grade was pulled away or was absent on the following dates resulting in lost special education support for the student, as follows:

August 8 (225 minutes), August 19 (85 minutes), August 21 (50 minutes), August 22 (50 minutes), August 23 (50 minutes), August 29 (145 minutes), August 30 (15 minutes), and September 3, 2024 (105 minutes) for a total of 725 minutes. On four days (August 22, August 23, August 26, and August 27, 2024), the teacher noted on the service log that an uncertain amount of in-class support was missed.

Conclusion

In summary, extensive paraprofessional absences and policy procedures followed by the district resulted in removing special education services from the student in the third grade setting. It is noted that the district's policy prioritizes student safety and that the district has taken actions to ameliorate service interruption due to staff absences.

Based on the foregoing, *it is substantiated* that USD # 469 in violation of state and federal regulations implementing the Individual with Disabilities Act (IDEA), failed to provide the amount of special education and related services required by the students' IEPs in the school, specifically in the kindergarten and third grade.

Systemic Inquiry

The USD # 469 in violation of state and federal regulations implementing the Individual with Disabilities Act (IDEA), failed to provide the amount of special education and related services required by the students' IEPs in the school, specifically in the kindergarten and third grade.

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.

Analysis: Findings of Fact

The parent alleged that other students in the school were also affected by the lack of paraprofessional support in general education classes. The parent alleged that she had learned this through speaking with school staff persons and that the problem of lack of support in general education classes was school-wide.

The district responded: "Staff attendance and depth of the hiring pool, especially for paraeducators, has been a challenge for the district for the past few years as it has been for most districts across the state. To ensure that we are still able to meet the needs and required IEP minutes for all students, job postings for paraeducator positions are always available and accepting new applicants. Building administrators schedule interviews weekly when new applicants become available. Since the first day of school, five new paraeducators have been hired to join the team at Lansing Elementary school (LES)." The district also responded that the

Elementary Special Education Coordinator “focused on a multi-year plan to provide consistent support and build structural systems in the areas of resources for teaching and learning, collaboration amongst general education and special education, training and professional development, and finally overall systems of support and processes.”

The district also responded, “we have prioritized working to increase our special education staffing as well as provide them with resources. . . to provide additional training and support for our current paraprofessionals.” The district listed the following steps: (a) Registered Behavior Technician (RBT) training for current paraprofessionals and RBT contracting with outside agencies (b) adding a full time Board Certified Behavior Analyst primarily supporting the elementary building students and staff, (c) having floater staff (.50 FTE) to cover absences (d) having a lead paraprofessional at the building to provide training and to cover absences (e) supporting a Paraprofessional PLC for training and support, and (f) holding weekly administrative meetings to discuss any concerns related to special education to work together to address problems collaboratively.

The district summarized its response by saying, “In conclusion, this complaint implies that we have a systematic flaw in implementing student IEPs by not providing the amount of special education and related services required by the student’s IEPs as regulated by the Individuals with Disabilities Act (IDEA) and state and federal guidelines. Lansing USD 469 refutes this claim based on the evidence provided . . . We do recognize that student inclusion minutes are not provided when staff absences reduce the building’s support staff to student ratio, however, as outlined in this response, we have district practices in place to monitor and adjust to meet the needs of all special education students.”

The findings of Issue One are incorporated herein by reference.

Interviews with district administrators along with the district’s response show that the district policy is to pull paraprofessional staff from providing services in the general classroom when needed to cover intensive need classrooms or ensure student safety in the building.

Interviews with district administrators and the district’s response to the allegations stated that five paraprofessionals were hired since the beginning of the year. The district submitted evidence of paraprofessional assignments schoolwide. The district reported policy and practices to provide adequate special education services according to students IEPs, including a regular hiring process, a half time “floater” position, a lead para to provide training and coverage for absences, quarterly paraprofessional training, a classroom-based tracking system for missed minutes, and weekly administrative review of service provision in the school.

Interviews with school personnel showed awareness of the staff reallocation/paraprofessional substitute policy based on need and paraprofessional skill as well as the implementation of the service tracking system reported by the district.

In a follow up email dated September 25, 2024, the district reported, "All of our paras are not able to work in higher needs programs (SLC and/or SBS) due to the intensity of the programs and various health needs, so we have specific staff members we utilize when absences in these programs cause us to shift our supports." One interrelated resource para is pulled from general education support services to cover other absences, the Para Lead is not assigned service minutes but serves as a floater and trainer, and one para serves only as an SLC substitute on a half time basis. Based on all the paraprofessional absences till September 13, 2024 when the evidence was submitted, there were 49 days of absences during which the school would have needed to cover paraprofessional services in the school.

Using a paraprofessional absence chart showing the 49 absence days the district was asked to provide a list of additional students affected by the paraprofessional substitute policy, focused on when a para was pulled from the general education classroom to provide services elsewhere in the school. The district reported that four students lost a total of 2 hours of special education services due to the policy, as follows: Student 1 (60 minutes), Student 2 (60 minutes), Student 3 (30 minutes) and Student 4 (30 minutes).

Conclusion

In summary, the district's policy appears to accept failure to provide general education support services when absences require the reallocation of staff in the school. The district acknowledged that four additional students were affected. It is noted that the school has put into place additional strategies that minimize the effect of staff absences since the beginning of the school year.

Based on the foregoing, *it is substantiated* that USD #469 failed to provide the amount of special education and related services required by the students' IEPs in the school (systemic inquiry).

Summary of Conclusions/Corrective Action

1. **ISSUE ONE:** A violation of 34 C.F.R. 300.323(c)(2) was found, based on reported absences of special education staff in the student's third grade classroom. Corrective action is required (as follows):
 - a. **CORRECTIVE ACTION:**
 - i. **By November 1, 2024**, USD #469 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) which require that the district implement the student's IEP.
 - ii. **By November 1, 2024**, USD #469 shall offer the parents 725 minutes of compensatory education directed toward assisting the student to make progress on IEP goals or in the general education curriculum. The parents shall have till **November 15, 2024** to accept all, some, or none of

the compensatory education offered by the district. The district shall provide the parents prior written notice regarding the compensatory education offer and parental reply by **November 30, 2024**.

- iii. By **November 1, 2024**, USD #469 shall provide training to any and all paraprofessionals who have responsibility for dismissing the student.
 - iv. By **November 30, 2024**, USD#469 will provide documentation of completion of 1(a)ii and 1(a)iii to SETS.
2. **Systemic Inquiry:** A violation of 34 C.F.R. 300.323(c)(2) was found, based on the loss of 120 minutes of special education services by four students in addition to the student. Corrective action is required (as follows):
- a. **CORRECTIVE ACTION:**
 - i. By **November 1, 2024**, USD #469 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) which require that the district implement all students' IEPs in the building by providing the special education support services in general education classrooms regardless of staff absences.
 - ii. By **November 30, 2024**, USD #469 shall revise as necessary the staff reallocation/para substitute policy in light of the corrective action in order to provide special education services in general education classes in the school as required by student IEPs, and the district shall submit the revised policy to SETS for approval. USD # 469 may contact TASN to request assistance in revising this policy.
 - iii. By **November 1, 2024**, USD #469 shall notify the parents of the four additional students that service minutes were missed, offer to meet with the parents, and provide an offer of equivalent compensatory service minutes to those missed by the students due to the staff reallocation/para substitute policy, directed toward assisting the students to make progress on IEP goals or in the general education curriculum. The parents shall have till **November 15, 2024** to accept all, some, or none of the compensatory education offered by the district. The district shall provide the parents prior written notice regarding the compensatory education offer and parental reply by **November 30, 2024**.
 - iv. By **November 30, 2024**, USD#469 will provide documentation of completion of 2(a)ii and 2(a)iii 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)