

KANSAS STATE DEPARTMENT OF EDUCATION
SPECIAL EDUCATION AND TITLE SERVICES
REPORT OF COMPLAINT
FILED AGAINST
UNIFIED SCHOOL DISTRICT #383, MANHATTAN/OGDEN PUBLIC SCHOOLS
ON SEPTEMBER 20, 2024

DATE OF REPORT: OCTOBER 22, 2024

This report is in response to a complaint filed with the Kansas State Department of Education against USD #383 Manhattan/Ogden 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 "the mother." The complaint is against USD #383 Manhattan/Ogden Public Schools. In the remainder of the report, USD #383 will be referred to as "the district."

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 20, 2024 and the 30-day timeline ended on October 20, 2024. The investigator subsequently requested a two day extension, so the timeline ended on October 22, 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. The evidence listed below was used in consideration of the investigation. Some of the evidence reviewed was dated prior to 12 months from the date of the investigation but was included to better understand the issue.

The Investigator contacted the district and parent several times by phone and email to clarify issues, evidence and conduct interviews. The Investigator emailed with the mother between September 22, 2024 and October 6, 2024 to understand the issue and clarify specific points. The investigator interviewed the parent and aunt who provides home schooling on October 6, 2024. The Investigator clarified issues and evidence with the district throughout the investigation and later interviewed Dr. Jessica Nelson, Director of Special Education, Caroline Holt, Secondary Special Education Coordinator, and Jennifer Young, High School, School Psychologist by phone on September 30, 2024. The following documentation and information were used in consideration of the issues:

1. IEP dated March 8, 2018
2. District Calendar 2023-2024

3. Independent Neuropsychological Evaluation dated April 19, 2024
4. Email exchange between parent and transition coordinator dated April 23, 2024 between 1:23 p.m. and 2:12 p.m.
5. Email exchange between parent and transition coordinator dated April 23, 2024 at 12:10 p.m. and April 24, 2024 at 11:04 a.m.
6. Email from parent to transition coordinator dated April 25, 2024 at 3:46 p.m.
7. Email exchange among transition coordinator to school psychologist, school psychologist 2, special education teacher 2 and special education teacher 3 dated April 30, 2024 at 7:48 a.m. and 9:06 a.m.
8. Email from parent to transition coordinator dated May 8, 2024 at 1:04 p.m.
9. Email from parent to transition coordinator and school psychologist 2 dated May 14, 2024 between 8:26 a.m. and 8:39 a.m.
10. Email from school psychologist 2 to parent dated May 15, 2024 at 9:26 a.m.
11. Request for Consent for Special Education Action dated May 16, 2024 parent signed consent on May 25, 2024
12. Envelope from parent to district offices postmarked June 4, 2024
13. Email exchange between parent and principal's secretary dated July 18, 2024 between 4:28 p.m. and July 19, 2024 at 2:12 p.m.
14. Email exchange between parent and transition coordinator dated July 31, 2024 between 1:18 p.m. and 2:13 p.m.
15. Email exchange between parent and principal's secretary dated August 5, 2024 between 12:19 p.m. and 1:23 p.m.
16. Email exchange among parent, transition coordinator, and principal's secretary dated between August 5, 2024 at 12:19 and August 6, 2024 at 4:35 p.m.
17. Email exchange between mother and special education teacher dated August 19, 2024 at 4:47 p.m. and August 20, 2024 at 1:21 p.m.
18. Part-time Enrollment Checklist signed by parent dated August 7, 2024, signed by principal dated August 31, 2024
19. Email exchange among parent, school psychologist, and coordinator of secondary special education dated September 9, 2024 between 7:18 a.m. and 3:24 p.m.
20. Email exchange between parent and school psychologist between September 8, 2024 at 10 p.m. and September 10, 2024 at 3:54 p.m.
21. Email from parent to coordinator of secondary special education, transition coordinator, special education teacher, assistant principal, school psychologist and student's aunt dated September 10, 2024 at 9:32 a.m.
22. Email from school psychologist to parent dated September 10, 2024 at 11:23 a.m.
23. Notice of Meeting dated September 10, 2024
24. Email exchange between parent and school psychologist dated September 11, 2024 between 7:59 a.m. and 9:39 a.m.

25. Email exchange among parent, coordinator of secondary special education, transition coordinator, special education teacher, assistant principal, psychologist and student's aunt dated between September 17, 2024 at 10:57 p.m. and September 19, 2024 at 9:41 a.m.
26. Email from parent to investigator dated September 21, 2024 at 3:03 p.m.
27. Email from parent to investigator dated September 22, 2024 at 7:08 p.m.
28. Email from coordinator of secondary special education to director of special education dated September 23, 2024 at 4:42 p.m.
29. Reevaluation/Continued Eligibility Report dated September 24, 2024
30. Draft IEP dated September 25, 2024
31. Staffing Summary dated September 25, 2024
32. Prior Written Notice for Identification, Initial Services, Placement, Change in Services, Change of Placement, and Request for Consent dated September 25, 2024
33. Email between school psychologist and parent dated September 26, 2024 at 10:02 a.m. and October 1, 2024 at 11:52 a.m.
34. Email from the director of special education to the investigator dated October 11, 2024 at 9:47 a.m.
35. District provided timeline dated from April 23, 2024 through September 25, 2024
36. 2024-2025 189 Day Work Teacher Assignment Teachers Calendar
37. 2024-2025 Student Schedule
38. District Part-Time Enrollment Guidelines

Background Information

This complaint addressed a ninth-grade student who is enrolled part-time in the district. A special education evaluation to determine eligibility and special education services was being conducted at the beginning of the 2024-2025 school year with a meeting to review the results of the evaluation scheduled for September 25, 2024. The student had an IEP dated March 8, 2018 from another district but was not dismissed from special education services. Between grades 3-8 the student was homeschooled and during that time the student moved to another school district. In the spring of the 2023-2024 school year the parent reached out to the new Kansas school district to consider returning part or full time to school and obtain post-secondary transition services. The parent provided an outside psychological evaluation and requested special education services for the student.

Issue Investigated

Issue One

Did the district appropriately respond to a parent request for an IEP for a child with a disability?

Applicable Law

Federal regulations at § 300.323(a) and state regulations at K.A.R. § 91-40-16(b)(1)-(3) state that at the beginning of each school year, each public agency must have in effect, for each child with a disability within its jurisdiction, an IEP as defined in § 300.320.

Letter to Siegel, 74 IDELR 23 (OSEP, February 19, 2019) is a guidance letter written by the United States Department of Education's Office of Special Education Programs (OSEP) in response to a series of questions regarding a child with a disability who transferred to a new local educational agency (LEA) during the summer. The letter explains that IDEA does not specifically address this situation. However, "IDEA requires that at the beginning of each school year, each LEA, State educational agency, or other State agency, must have in effect, for each child with a disability in the agency's jurisdiction, an IEP. 20 U.S.C. § 1414(d)(2)(A) and 34 C.F.R. § 300.323. Therefore, public agencies must ensure that an IEP is in effect at the beginning of the school year for children who move into a new public agency during the summer. How a public agency meets this requirement is a matter to be decided by each individual new public agency. If the parent requests that the new public agency convene the IEP Team prior to the start of the school year and the public agency refuses to do so, the agency must provide written notice to the parent of the refusal. The prior written notice must include, among other content, an explanation of why the agency determined that conducting the meeting is not necessary to ensure the provision of appropriate services to the student. 20 U.S.C. §§ 1415(b)(3) - (4) and 1415(c)(1); and 34 C.F.R. § 300.503."

Eagle Mountain-Saginaw Independent School District, is a Texas special education due process decision that reiterates that public agencies must ensure that an IEP is in effect at the beginning of the school year for children who move into a new public agency during the summer, but did not require the district develop a new IEP for the first day of school. How a public agency meets this requirement is a matter to be decided by each individual new public agency. (60 IDELR 178 (SEA TX 2012)).

Analysis: Findings of Fact

The Parent alleged that the family had been in contact with the special education department of the district since last spring about enrolling the student with a disability and an IEP from March 8, 2018 and it was not until Day 20 that any type of special education assistance was provided even though the student was visibly struggling and even then, the support was

inadequate. The parent stated that she had been trying to get the school to put something in place to assist the student until the new IEP is finalized.

The district responded that following a spring meeting with the student and family, they followed their procedures for enrolling a part-time student and conducted an initial special education evaluation to determine whether the child is a child with an exceptionality and the educational needs of the child. They stated that they were aware the student had a disability, but they were not aware the student had an IEP until receiving it from the parent. They further stated they provided comparable services during the special education evaluation as they listened to the parent input. They assert they expedited the evaluation and met with the family on September 25,

The IEP dated April 8, 2018 documented that the student was eligible for special education as a child with other health impairments and provided services for special education and social work. It included accommodations for the use of graphic organizers, use of fidgets, quiet settings or small groups, and stress breaks. The IEP documented that the student received direct special education services as needed for breaks, behavior, and assistance with accommodations for testing. A daily check-in each morning and check-out was provided by special education staff on a daily basis, each day of the week for 15 minutes each morning and afternoon.

An email exchange among the parent, secondary special education coordinator and transition coordinator between April 23 and 24, 2024 documented the parent arranged for a tour of the high school, explained the student's history, disabilities, and shared the April 19, 2024 neuropsychology evaluation.

An email from the district office to the transition coordinator on April 23, 2024 at 12:10 p.m. documents that the parent sent an email to the district describing that the student has ASD (moderately on the spectrum), dyslexia/dysgraphia and ADHD. The parent further stated that school testing was recently completed for IEP purposes.

A neuropsychology report dated April 19, 2024 from a private evaluation center recorded the student had diagnoses of ASD Level 2, Dyslexia, dysgraphia, and ADHD.

An email from the parent to the transition coordinator on May 8, 2024 documented that the parent intended to enroll the student part-time in the district beginning during the 2024-2025 school year and the student would need special education services.

The parent and aunt stated during an interview with the investigator on October 6, 2024 that they offered to provide a copy of the student's IEP during the interactions with the district between April 23, 2024 and the end of the school year, but the district declined stating they would obtain the last IEP directly from the district.

The Request to Evaluate consent form dated May 16, 2024 documented that the district notified the parent that the student would be evaluated for special education services in

response to receiving the March 2024 neuropsychology evaluation and parent information. The Request to Evaluate form documented that the parent signed consent for a special education evaluation on May 25, 2024.

Email exchanges between July 18, 2024 and August 6, 2024 between the parent and principal's secretary show that the student's enrollment and transition to the high school were discussed.

An Email from the mother to the transition coordinator documented that on August 6, 2024 a request was made for the student to walk the building and discuss credits/schedule and student needs. The parent asked for meetings to discuss special education services and implementation of the accommodations when the student began the school year. The transition coordinator proposed August 8 to meet to go over evaluation paperwork, half-time enrollment, and credits.

The student schedule showed that the student was enrolled for attendance for three courses, biology, drama, and physical education. Interview with the district revealed that the student received 1:1 para support during the school start up to aid in observation for the special education evaluation. The district reported during the interview that observation noted that the student was easily redirected with unfamiliar school routines. The student was provided a laminated "break" pass to show to teachers when he needed a break. The parent stated that the student did not understand how or when to use the pass and as a result did not use it when it was truly needed.

An email on August 19, 2024 to the parent provided the name of the student's case manager. An email on August 20, 2024 at 12:51 p.m. from a special education teacher to the parent clarified an error, "[student] is listed as a potential student on [teacher's] caseload but is still 'in referral'." To which the parent responded, "[student] should already be considered eligible for SpEd, if that is the eligibility you're talking about."

On September 8, 2024 at 10:00 p.m. the parent emailed the district checking in on obtaining supports for the student and inquiring how the student's needs are communicated with the classroom teachers. On September 9, 2024, the school psychologist emailed the mother that, "We have been in the process of completing the transition portion of the evaluation. The school has 60 school days to complete any evaluation. The transition has now been completed." The mother replied that the student transferred into this district with a Kansas IEP so expected that something would be in place at the start of the school year, even as additional evaluation was occurring.

On September 9, 2024 at 8:23 a.m. the school psychologist wrote the mother, "This is the first I have heard of an existing IEP. There was no mention during our in person meeting prior to school starting nor have I seen this IEP. It is my understanding that he has been homeschooled and this is the first [student] has been in public school for quite some time...If there is a current IEP, please forward immediately."

On September 9, 2024 at 2:53 p.m. the school psychologist wrote in an email to the parent, "The IEP from 2018 is no longer current and [student's] present level of performance and needs would likely not be that same. That is why time is needed to obtain data to determine needs." The parent responded, "I understand it's an old IEP, but when he is gone for a whole class period or, like today, the principal calls me telling me that a [classmate] complained that [student]s put [student] hands on [classmate] I expect you to move quicker to get some sort of oversight in place. I started this process in April to avoid this."

An email from the mother to the district on September 10, 2024 at 9:32 a.m. documented, "Please find attached [student] IEP from [previous district]. Though it is old, it is not expired and I believe there are things that could have been put in place on the first day of school. It is now Day 19, which is an unreasonable time to have lapsed, especially when [student] is struggling and has since Day 4. I don't know if you attempted to get any records from [previous district], but you have had the academic testing done by [outside agency] evaluation since last spring."

The Reevaluation/Continued Eligibility Report dated September 24, 2024 and discussed on September 25, 2024 concluded that the student qualifies for special education and related services as a student with autism and specific disability with dyslexia. As well the student has dyslexia.

A draft IEP was reviewed and discussed during the evaluation meeting and full-time enrollment was recommended. The prior written notice dated September 25, 2024 documented the purpose of the meeting was to determine "whether your child was eligible for special education, special education and related services needed by your child and the appropriate educational placement to provide special education and related services identified in your child's Individualized Education Program (IEP)." A description of the action proposed was that the student "qualifies for having an exceptionality and needs special education services.

Conclusion

In summary the district and parent agreed the student had a disability, but the district proceeded with this student's enrollment in the district by determining eligibility and appropriate services, either assuming the 2018 IEP was no longer current or in effect due to the lengthy period of homeschooling or not being aware that the student had an IEP. The parent believed she was enrolling the student as a transfer student with an IEP as demonstrated by contacting the special education department, describing the disability, providing current outside evaluation for IEP purposes, and requesting a meeting prior to the start of the school year to determine services. As well, she referred to the student as a transfer student from another Kansas district.

The regulations are not clear as to how this situation should be addressed, but a number of courts have found that the appropriate regulation is §34 C.F.R. 300.323(a) which says, "At the

beginning of each school year, each public agency must have in effect, for each child with a disability within its jurisdiction, an IEP as defined in §34 C.F.R. 300.320.” Eagle Mountain-Saginaw Independent School District. 60 IDELR 178 (SEA TX 2012) further clarified that a new IEP does not need to occur prior to the school year, but the prior IEP does need to be implemented.

The investigator considered whether federal regulations at §34 C.F.R. 300.323(e) regarding treatment of a transfer student applied, however the student in this case did not move in during the school year in which the IEP was operating, and Letter to Siegel, 74 IDELR 23, (OSEP 2019) clarified that when a student does not move in “within the same school year,” § 300.323(e) does not apply. Thus, when a student does not move “within the same school year,” the student should not be treated as a transfer student.

Finally, the investigator considered whether child find federal regulations at §34 C.F.R. 300.111(a) and Kansas Regulations at K.A.R. § 91-40-7(a) applied, however the student was already identified as eligible in the previous district and no action had occurred to dismiss the student from services.

Therefore, according to §34 C.F.R. 300.323(a), this is a student with an IEP who lived within the jurisdiction of the district since 2018 and was homeschooled during those years. When the parent enrolled that child in public schools the district had an obligation to ensure that an IEP was in effect at the beginning of the school year for the student by implementing the last agreed upon IEP, which would include any revisions made by the student’s new IEP Team (if any). The district had an obligation to request and receive a copy the previous IEP (§ 300.320(g)(1)). It is acknowledged that the district implemented many of accommodations from the previous IEP to provide comparable service during the evaluation. It is found that the parents requests to discuss the students supports while the evaluation was occurring should have triggered an IEP Team meeting prior to the start of the school year. No prior written notices or other special education actions document the request or refusal of such request.

Therefore, it is found that USD #383 did not appropriately respond to a parent request for an IEP for a child with a disability by implementing an IEP to the student from the start of the 2024-2025 school year until the district conducted an IEP meeting on September 25, 2024.

Summary of Conclusions/Corrective Action

1. ISSUE ONE: A violation of 34 C.F.R. §34 C.F.R. 300.323(a) was found, based on the facts above. Corrective action is required.
 - A. CORRECTIVE ACTION:
 - i. By November 22, 2024, USD #383 shall submit a written statement of assurance to Special Education and Title Services (SETS) stating that it will comply with federal regulations 34 C.F.R. 300.323(a) which require that at the beginning of each school year, the school

district must have in effect, for each child with a disability within its jurisdiction, an IEP.

- ii. By November 22, 2024, or as soon as practicable convene the IEP team to implement the March 8, 2018 IEP and consider revisions to the IEP. This IEP meeting will be documented by a prior written notice. *This correction action step need not be completed if, prior to November 22, 2024, the continuing eligibility decision has been completed and a new IEP is developed for the student.
- iii. By November 22, 2024, the IEP team will reconvene to offer compensatory services for the number of days between the start of the school year and the implementation of the March 8, 2018 IEP as ordered in 1(a)i or new IEP is written, whichever occurs first.
- iv. By December 8, the district will provide evidence of completion of 1(a)i, 1(a)ii and 1(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)