

KANSAS STATE DEPARTMENT OF EDUCATION
SPECIAL EDUCATION AND TITLE SERVICES
REPORT OF COMPLAINT
FILED AGAINST
UNIFIED SCHOOL DISTRICT #290, OTTAWA PUBLIC SCHOOLS
ON OCTOBER 30, 2024
DATE OF REPORT: NOVEMBER 29, 2024

This report is in response to a complaint filed with the Kansas State Department of Education against USD #290 (Ottawa Public Schools) on behalf of ----- by her mother, ----- . In the remainder of the report, ----- will be referred to as “the student” and ----- will be referred to as “the complainant”, “the parent”, or as “the mother.”

The complaint is against USD #290 (Ottawa Public Schools). In the remainder of the report, USD #290 will be referred to as “the district.” In the remainder of this report, district staff will be referred to as follows:

- Joseph Vitt, Assistant Superintendent / Director of Special Education
- Lark Lund, Assistant Director of Special Education
- Casey Bass, Speech/Language Pathologist (SLP), at Sunflower Elementary School
- Christine Schrepel, Occupational Therapist (OT) at Sunflower Elementary School
- Kristie Butler, Preschool/Early Childhood Special Education (ECSE) Teacher at Sunflower Elementary School
- Emili Sessions, Paraprofessional #1 at Sunflower Elementary School
- Kianna Harold, Paraprofessional #2 at Sunflower Elementary 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 October 30, 2024 and the 30-day investigation timeline ended on November 29, 2024.

Evidence Reviewed

The mother was interviewed on November 15, 2024 as part of the investigation. In addition, the parent provided written consent for the investigator to interview Paraprofessional #1 who worked with the student in the preschool classroom at Sunflower Elementary School. This interview was conducted on November 18, 2024.

USD #290 was given the opportunity to schedule an interview with relevant school staff but chose to only provide written documentation to be considered during the investigation.

During the investigation, the Complaint Investigator, Nancy Thomas, reviewed all evidence and documentation provided by both the district and the parent. The following documentation was used in consideration of the issues:

1. Team Evaluation Eligibility/Identification Report dated March 5, 2024
2. Staffing Record dated March 5, 2024
3. Individualized Education Program (IEP) dated March 5, 2024
4. Teacher Information Page dated March 5, 2024
5. Prior Written Notice (PWN) for Identification, Special Education and Related Services, Educational Placement, Change of Services, Change of Placement, and/or Request for Consent dated March 5, 2024
6. Potty Log dated between August 14 and September 19, 2024
7. Speech/Language Pathologist (SLP) Service Logs dated between August 14 and September 30, 2024
8. Handwritten anecdotal log written by the mother dated between August 14 and October 22, 2024
9. Occupational Therapy (OT) Services Logs dated between August 15 through October 12, 2024
10. Early Childhood Special Education (ECSE) Data Sheets dated between August 19 and September 26, 2024
11. Daily Communication Logs dated between August 21 and September 26, 2024
12. Notes from the August 23, 2024 phone call between the parent and the Assistant Director of Special Education
13. Copies of Google voice messages between the parent and the Assistant Superintendent / Director of Special Education dated between August 27 and October 10, 2024
14. Class Dojo messages dated September 5 and September 6, 2024
15. Transfer Request dated September 26, 2024
16. Emails dated between September 27 and October 10, 2024 between the parent and the Assistant Superintendent / Director of Special Education
17. Response to the Allegations dated November 13, 2024 written by the Assistant Superintendent / Director of Special Education
18. Student's Daily Class Schedule at Sunflower Elementary School
19. Preschool/ECSE Daily Class Schedule at Sunflower Elementary School
20. USD #290 Preschool Calendar for the 2024-25 school year
21. USD #290 School District Calendar for the 2024-25 school year
22. Photo of the student at a Lego station in the classroom

23. Photo of alternate seating
24. Photo of fidget tubs
25. Photo of independent work tubs
26. Photo of visual schedule

Background Information

The subject of this complaint is a four year-old girl who lives with her mother in USD #290. She has a medical diagnosis of Autism spectrum disorder and additional diagnoses of Mixed Receptive and Expressive Language Disorder and lack of coordination. Records show that the student was initially identified and received early intervention services in Iowa through an Individualized Family Support Plan (IFSP). The family moved into USD #290 in November 2023 and the student was enrolled in the preschool program at Sunflower Elementary School.

Her initial special education evaluation was completed on March 5, 2024 when the student was determined eligible for special education and related services under the exceptionality category of Autism. An IEP was developed and the student received the required special education and related services in the preschool program located in Sunflower Elementary School for the remainder of the 23-24 school year and during the summer 2024 extended school year (ESY). The student began the 2024-25 school year in the preschool program at Sunflower Elementary School but the parent requested a transfer to the preschool program at Lincoln Elementary School on September 26, 2024. This transfer request was approved on September 27, 2024 and the student began attending preschool at Lincoln Elementary School on October 4, 2024.

Issues Investigated

Based on the written complaint and an interview with the complainant, two issues were identified and investigated.

Issue One

USD #290, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to implement the student's IEP, specifically by not providing the required special education and related services at the beginning of the 2024-25 school year.

Parent Position

The parent reported that the student is supposed to receive 15 minutes of speech/language therapy and 15 minutes of OT twice per week in addition to 60 minutes per day of specialized instruction according to the IEP. After the first week of school, she requested to know what was being done during the therapy but was told by the Preschool/ECSE Teacher that the IEP services would not start until the following week. She also reported being informed that the

specialized instruction would be provided by the Preschool/ECSE Teacher in the classroom “as often as she [the Preschool/ECSE Teacher] thought the student needed it to meet her goals”.

The mother stated that she provides the student’s diapers for classroom use and that the student is allergic to LUVs diapers. The mother indicated that this allergy is written in the student’s IEP; however, the student was sent home in a LUV’s diaper on the second day of school which resulted in an allergic rash. The mother stated, “The Preschool/ECSE Teacher blamed it on a para and said they were unable to find the student’s diapers that I brought when the student met the Preschool/ECSE Teacher”. The parent believes that the school staff working with the student were unaware of her IEP and failed to provide the required IEP services beginning on the first day of the 2024-25 school year.

Applicable Law

Federal regulations at 34 C.F.R. 300.320(a)(7) require the IEP to include the projected date for the beginning of the special education and related services as well as the anticipated frequency, location, and duration of each of those services.

Federal regulations at 34 C.F.R. 300.323(a) require that school districts have an IEP in effect at the beginning of each school year.

In addition, federal regulations at 34 C.F.R. 300.323(c)(2) requires 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. 300.17 states that when special education and related services are provided in conformity with the IEP so that the student is making progress towards achieving the IEP goals, the student is receiving a free appropriate public education (FAPE).

Finally, federal regulation implementing the IDEA at 34 C.F.R. 300.156 require each state education agency (SEA) to establish and maintain qualifications to ensure that personnel necessary to provide special education and related services in accordance with the IEP are appropriately and adequately prepared and trained. The Kansas Department of Education (KSDE) details personnel qualifications in the [Special Education Reimbursement Guide: State Categorical Aid](#) and allows paraprofessionals to provide direct instruction to students with disabilities under the supervision of an appropriately certified teacher.

Findings of Fact

Based upon a review of documentation and interviews, the following are a finding of the facts related to this allegation:

1. USD #290 has a 2024-25 School Year Calendar and a separate 2024-25 Preschool ONLY School Year Calendar.
2. The first day of the 2024-25 school year for the student was on August 14, 2024.
3. The IEP in effect on the first day of the 2024-25 school year is dated March 5, 2024 and requires OT for 15 minutes twice per week; speech/language therapy for 15

minutes twice per week; and 60 minutes per day of specialized instruction five times per week. All of these services are to be provided in the Early Childhood setting beginning on March 5, 2024 and ending on March 4, 2025.

4. The present level of academic and functional performance in the March 5, 2024 IEP states. *"According to the school nurse, the student has food sensitivities to grape juice, carrots, and dairy".*
5. Under the Participation with Nondisabled Peers section of the March 5, 2024 IEP, the following three clarifications are made:
 - a. *"When provision of the regularly-scheduled special education and related services is not possible due to events that are beyond the control of the school such as school closure due to weather or other emergencies, emergency drills, or when the child is absent from school, compensatory services will not be provided. Special education services will not be provided when school is not in session according to the school calendar".*
 - b. *"The IEP team has determined that for the student to have opportunities to participate with non-identified peers in extracurricular and nonacademic activities, regularly scheduled special education and related services may not occur when their delivery would prevent the child from participating in field trips, assemblies, special events for the general education classroom or school, state- or district-wide assessments, and other activities".*
 - c. *"At the beginning of each school year, elementary students receiving services under an IEP may remain in the general education classroom in order to establish an understanding of classroom procedures and routines and to facilitate participation in general education classroom/building activities. Special Education pull-out services will commence no later than 5 (five) school days following the first full day of the school year.*
6. Documentation shows the SLP provided services to the student on August 14, 15, and 16, 2024 by pushing into the student's classroom. No services were provided to the student during the week of August 19 - 23, 2024. The student also received speech/language therapy services on September 4, 9, 11, 16 and 25, 2024. The records note that the student was absent on September 18 and 23, 2024.
7. Documentation shows the OT provided services to the student on August 15, 16, 19, 22, 26, and 28, 2024 as well as on September 4, 9, 11, 16, 23, and 25, 2024. The records note that the OT was unavailable to provide services on September 30 and the student was absent on October 1, 2024.
8. Documentation shows that data was collected on the student's IEP goals in the classroom setting during the weeks of August 19 and 26 as well as September 2, 9, 16, and 23, 2024.

9. The Daily Communication Logs support the provision of services reported on the OT and SLP Logs and the IEP goal data collection sheets.
10. The student's Daily Schedule shows classroom instruction occurring from 12:45 PM to 2:50 PM each school day. Documentation support that the student is being supervised 100% of the time by a school staff member e.g. ECSE teacher, OT, SLP, and/or one of the paraprofessionals.
11. Documentation found the parent requested a transfer to the preschool program at Lincoln Elementary School on September 26 and this request was granted on September 27, 2024. Due to staffing, the student was not allowed to transfer to the new school until October 4, 2024 and the parent chose to keep the student home in the interim.
12. The parent reports that since that time, the student is happy to go to preschool at Lincoln Elementary School and that the student is making progress towards achieving her IEP goals.

Analysis / Conclusion

In this case, the parent had three concerns. The first concern was that the related services of OT and speech/language therapy required by the student's IEP were not being provided when school started on August 14, 2024. Documentation and interviews found that speech/language and OT services began during the first week of the school year. However, the documentation shows the student was not offered the required 30 minutes per week of speech/language therapy during the week of September 9 - 13, 2024 and, thus, USD #290 failed to implement the IEP as written during that time period. Subsequently, the student was transferred at parent request from the preschool program at Sunflower Elementary School to the preschool program at Lincoln Elementary School where the parent reports the IEP being implemented and the student making progress towards her IEP goals.

Based on the foregoing, USD #290 is found *OUT of compliance* with 34 C.F.R. 300.323(c)(2) because the IEP was not implemented as required for the provision of the speech/language services during the week of August 19 - 23, 2024. However, while USD #290 did not implement the student's IEP as written for one week at the beginning of the school year, USD #290 did provide the student with a free appropriate public education during the 2024-25 school year to date as the student is making progress towards her IEP goals despite missing the 30 minutes of required speech/language therapy.

In addition, the parent was worried that the 60 minutes per day of specialized instruction was not being provided by the special education teacher. However, the IEP requires the 60 minutes per day of specialized instruction to be provided in the early childhood setting, which in this case is the preschool classroom taught by the Preschool/ECSE Teacher with the support of two classroom paraprofessionals and the related services staff. The student's schedule shows the student is receiving instruction between 12:45 and 2:50 PM each day from the classroom teacher, related services providers, and/or one of the paraprofessionals. Based on

the foregoing, USD #290 is found *IN compliance* with the requirement to implement the IEP as written and to provide the student with FAPE.

Finally, the parent was concerned that the mistake that was made in regards to the use of the appropriate diapers was a result of the Preschool/ECSE Teacher not being aware of what was included in the student's IEP. Documentation found that the allergy to LUV's diapers is not included in the student's March 5, 2024 IEP. While the student's teacher and classroom staff should be aware of any allergies or medical conditions which may impact the student in the school setting, the LUV's allergy is not included in the student's current IEP and, as such, the district was not required to know and implement this information under the IDEA. Therefore, in this particular case, USD #290 is found to be *IN compliance* with the requirement to implement the IEP as written.

In the future, the parent may want to have this information documented in the Legal Educational Decision-Maker Input and Concerns section of the student's IEP if she believes it is relevant to providing the student with FAPE.

In addition, USD #290 is cautioned to review and revise the three clarification statements in the Participation with Non-Disabled Peers section of the IEP which describes the district's procedures and practices regarding the implementation of an IEP which directly affects when compensatory services must be considered for student's missing specialized instruction and/or related services during specific periods of time during the school year as well as directly affecting when a student who receives "pull out" minutes will start to receive their required IEP services when school begins.

The first two clarification statements unilaterally deny the need for any compensatory services due to situations in which the district is unable to provide the required specialized instruction or related services due to a variety of reasons.

The third clarification statement is not individualized for each student with the wording of "*may remain in the general regulation classroom*" as well as "*Special Education pull-out services will commence **no later than 5** (five) school days following the first full day of the school year*". This subjective language makes it unclear to the parent and does not pass "the stranger test" for making the IEP clear to all parties.

It is noted that the first two clarification statements do not apply to the student who is the subject of this investigation because that particular student did not miss any services due to any of the specific situations described. The third clarification statement also does not apply to this particular student because the student is placed 100% of the time in the general education preschool setting and receives no "pull out" services.

However, these statements appear to unilaterally make a predetermination that compensatory services are not necessary and usurps the IEP team's authority to determine whether a student was denied educational benefit because of a disruption in educational services which

may have impacted the provision of FAPE. Please refer to the *Office of Special Education Programs (OSEP) Dear Colleague Letter to Wolfrum* dated January 10, 2022 which states,

... Generally, the decision to provide "make up" or compensatory education when there is a disruption in the provision of educational services, and the nature and amount of the special education and related services that are to be provided as compensatory education, is an individualized determination made by the individualized education program (IEP) Team in accordance with the requirements in 34 C.F.R. 300.320 - 300.324.

Issue Two

USD #290, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to implement the student's IEP, specifically by not providing the required paraprofessional support on September 5, 2024.

Parent Position

The parent reported that USD #290 failed to provide the required paraprofessional support for the student on September 5, 2024 which resulted in the child suffering an injury leaving a bite mark/bruise on the child's arm. The parent communicated with the Preschool/ECSE Teacher regarding her concern and was told that the injury did not occur at school because the student is always supervised by a paraprofessional. The parent was later told that the paraprofessionals were not with the student at all times on September 5, 2024.

Applicable Law

Federal regulations at 34 C.F.R. 300.323(c)(2) requires 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.

Findings of Fact

Based upon a review of documentation and interviews, the following are a finding of the facts related to this allegation:

1. On September 6, 2024, the parent sent a Class Dojo message to the Preschool/ECSE Teacher reporting a bite mark on the student's arm and questioning what had happened the previous school day.
2. The Preschool/ECSE Teacher responded to the parent in Class Dojo that same day stating, *"She is with a para all day and was not in close contact with any other child in her class and none of us saw her fall or hit her elbow/arm at any time during school."*
3. The parent reported she was told by Paraprofessional #1 that neither para was with the student the whole day on September 5, 2024 because the Preschool/ECSE Teacher stayed in the classroom with the student while the two paraprofessionals assigned to the classroom took the rest of the class to the lunchroom.

4. USD #290 stated in the Response to the Allegations that *"The Preschool/ECSE Teacher was conveying the fact the student was never alone and no one saw her get hurt. The student is supervised 100% of the time she is on school property. That does not mean it is always by a paraprofessional. On the day in question, the student may have stayed in the classroom with the Preschool/ECSE Teacher while the paras took the other students to the lunchroom. She was, however, supervised."*
5. The IEP in effect on September 5, 2024 was developed on March 5, 2024.
6. The March 5, 2024 IEP requires 30 minutes per week of OT; 30 minutes per week of speech/language therapy; and 60 minutes per day of specialized instruction in the early childhood setting. No supplementary aids or services are included in the IEP and the IEP specifically does not require access to paraprofessional support throughout the school day.
7. During an interview with Paraprofessional #1, it was reported that the student remained in the classroom with the Preschool/ECSE Teacher on September 5, 2024 while the two paraprofessionals accompanied the rest of the class to the lunchroom.

Analysis / Conclusion

In this case, the parent was concerned that the student came home from school with a bite mark/bruise on September 5, 2024. The parent was told the injury did not occur at school because the student is supervised 100% of her school day. The parent believes this supervision is required by the student's IEP and is being provided by either one of the two paraprofessionals assigned to the student's classroom.

However, the IEP in effect on September 5, 2024 is dated March 5, 2024 and only requires 30 minutes per week of OT; 30 minutes per week of speech/language therapy; and 60 minutes per day of specialized instruction in the early childhood setting. The IEP does not include any supplementary aids or services and the IEP specifically does not require access to paraprofessional support throughout the school day. Regardless, USD #290 did report that the student is supervised 100% of the time she is on school property and interview and documentation found this supervision was provided through a combination of the two classroom paraprofessionals and the Preschool/ECSE Teacher on September 5, 2024.

Based on the foregoing, USD #290 is found to be *IN compliance* with the requirement to implement the student's IEP as written.

Summary of Conclusions/Corrective Action

ISSUE ONE: Interviews and documentation support a finding that USD #290 did have an IEP in effect for the student at the beginning of the 2024-25 school year as required by federal regulations at 34 C.F.R. 300.323(a). However, USD #290 is found OUT of compliance with the requirements of federal regulations at 34 C.F.R. 300.323(c)(2) because the IEP was not implemented as required for the provision of the speech/language services during the week of August 19 - 23, 2024.

The following corrective action is ordered:

1. No later than January 15, 2025, USD #290 will provide the KSDE with an assurance statement that it will meet the requirements of federal regulations at 34 C.F.R. 300.323(c)(2) and ensure that the IEPs of all students are being implemented as written.
2. While noncompliance is identified because the district failed to provide the required speech therapy services during the week of August 19 - 23, 2024, the student's subsequent progress towards achieving her IEP goals indicates this noncompliance did not impact the provision of FAPE to the student. As such, no compensatory services are ordered.

ISSUE TWO: Interviews and documentation support a finding that USD #290 is IN compliance with federal regulations at 34 C.F.R. 300.323(c)(2) which requires 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. In this case, the student's current IEP does not require any supplementary aids or services, specifically paraprofessional support services. As such, no corrective action is ordered.

It should be noted that while the current IEP does not require any paraprofessional services, there is evidence that the student is supervised 100% of the school day due to behaviors associated with her exceptionality of Autism. USD #290 provides this level of support through the structure of the district's preschool program.

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)