

KANSAS STATE DEPARTMENT OF EDUCATION
SPECIAL EDUCATION AND TITLE SERVICES
REPORT OF COMPLAINT
FILED AGAINST
UNIFIED SCHOOL DISTRICT #229, BLUE VALLEY SCHOOLS
ON OCTOBER 25, 2024

DATE OF REPORT: DECEMBER 1, 2024

This report is in response to a systemic and child complaint filed with the Kansas State Department of Education by ----, a paraprofessional employed in the social emotional classroom at Cottonwood Point Elementary School. In the remainder of this report ---- will be referred to as “the complainant.”

The systemic complaint is on behalf of all students in this classroom (Issue 1). Evidence for a student, ---- was provided by the complainant on behalf of the systemic complaint and this student will be referred to as “student A.” A total of six students were named in the complaint.

The individual child complaint is on behalf of ----, a student in this classroom (Issues 2 and 3). In the remainder of the report, ---- will be referred to as “the student.”

The complaint is against USD #229 Blue Valley Public Schools. In the remainder of the report, USD #229 will be referred to as “the district” and the Social Emotional Resource (SER) room will be referred to as “the resource room”.

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 25, 2024 and the 30-day timeline ends on November 24, 2024. The investigator requested a one-week extension to complete the investigation. It was granted and the revised timeline ends on December 1, 2024.

Evidence Reviewed

The investigator spoke with the complainant on October 28, 2024 and emailed several times to clarify the complaint, determine which issues were systemic and which were directed to a specific child. The scope of the investigation was revised one time after further clarifying the letter of complaint with the complainant.

The investigator spoke with the staff at the district on the October 29 and October 30, 2024 to clarify the complaint. The investigator interviewed Katie Burrow, Building Principal, Katie Schwiebert, teacher in the classroom and Amanda Newell-Green, social worker in the classroom on November 18, 2024.

During the investigation, the Investigator Donna Wickham reviewed all evidence and documentation which was provided by both the district and the complainant. The following documentation and information were used in consideration of the issues:

1. Notice of Meeting dated August 19, 2024
2. Student Evaluation report dated September 4, 2024
3. Student Individual Education Program (IEP), dated September 4, 2024
4. Student Meeting notes from September 4, 2024 IEP
5. Student Behavior Graph excel spreadsheet dated between September 4, 2024 – October 31, 2024
6. Amended Student IEP, dated October 2, 2024
7. Student Prior Written Notice for Identification, Initial Services, Placement, Change in Services, Change of Placement, and Request for Consent (PWN), dated October 2, 2024
8. IEP Progress Report, dated October 11, 2024
9. District Response dated November 13, 2024
10. Email from the director of special education to investigator dated November 18, 2024 at 1:29 p.m.
11. Summary of a Contact with an Employee (complainant) dated October 15, 2024
12. District Paraeducator Handbook, 2023-2024
13. Student Behavior Data sheet, undated
14. Student Reinforcement Plan, undated
15. Data Sheet for Student A on a clipboard dated October 29, 2024
16. AC Behavior Cheat Sheet on a clipboard
17. Student a Token Board with photos of Student a and staff on a clipboard
18. Photo of open 3 ring binder showing Student a Behavior Intervention Plan opened in notebook
19. Opened clipboard case showing student schedule, Behavior Intervention Plan, and iPad plan for Student a
20. District Policy Manual – Student Records, Code 3810, last revised January 13, 2020
21. District Policy Manual – Access To and Release Of Student Records, Code 3811, last revised April 13, 2015

22. Administrative Guidelines, 3000 Students, Directory Information Records
Administrative Guidelines Code 3820 AG
23. District Policy Manual - Students Title Directory Information Records Code 3820,
Last Revised September 8, 2014
24. District Paraprofessionals (SPED) Training Courses (Paraeducator Handbook,
Paraeducator Orientation, Paraeducator Confidentiality & Communication,
Paraprofessional Behavior Basics)

Background Information

This complaint addressed a systemic issue regarding student information in a resource room not being protected by the staff and a child complaint regarding IEP implementation and producing progress notes using accurate data collection for an eight-year-old third grader in the resource room. The student in the child complaint is eligible for special education and related services under the category of emotional disability. The student is in a classroom for students with social emotional needs and is staffed by a certified teacher, social worker and paraeducators. As well, this student received special education services from an occupational therapist and the behavior intervention plan is monitored and revised by a board certified behavior analyst (BCBA).

Issues Investigated

1. **ISSUE ONE:** Did the district protect personally identifying information (PII) of the students in the resource room during the 2024-2025 school year?
2. **ISSUE TWO:** Did the district use accurate data to complete IEP progress reports for the first quarter of the 2024-2025 school year for the student?
3. **ISSUE THREE:** Did the district implement the IEP of the student, specific to services during the 2024-2025?

Issue One

Did the district protect personally identifying information (PII) of the students in the resource room during the 2024-2025 school year?

Applicable Law

Federal regulations at 34 C.F.R. §§300.610 through 300.626 identify the confidentiality requirements that apply to children under Part B of the IDEA. They protect the personally identifiable information (PII) in education records collected, maintained, or used under Part B of the IDEA. 34 C.F.R §300.32 defines PII as information that contains the name of the child, the child's parent, or other family member; the address of the child; a personal identifier, such as the child's social security number or student number; or a list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty.

Federal regulations at 300.623(a) and (c) state that each participating agency must protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages and all persons collecting or using personally identifiable information must receive training or instruction regarding the State's policies and procedures under §300.123 and 34 CFR part 99.

Under 34 CFR § 300.622(a) of the IDEA Part B regulations, parental consent must be obtained before PII is disclosed to parties, other than officials of participating agencies. Under IDEA Part B and pursuant to the FERPA regulations at 34 CFR § 99.31(a)(1), prior written consent is not required to disclose PII from student education records to school officials, including teachers, within the educational agency or institution, whom the agency or institution has determined to have legitimate educational interests. 34 CFR § 99.31(a)(1)(i)(A).

Unless the district has parent consent, or a FERPA exception applies, a district must prevent the disclosure to any unauthorized person of personally identifiable information from student records. Disclosure is the release, transfer or other communication of records, or the personally identifiable information contained in those records, to any party, by any means, including oral, written, or electronic.

Analysis: Findings of Fact

The complainant alleged that clipboards containing student data tracking sheets, visual schedules and detailed behavior intervention programs that were identified with the student's name were left lying around or had been misplaced for hours at a time. Further, confidential information regarding specific student's involvement with the District of Child and Family (DCF) and the student's family were discussed between staff members in a location where the students or peers could overhear.

The district responded that they take the confidentiality of students and IEP materials very seriously. All classified staff and paraprofessionals participate in training at the start of each school year regarding FERPA, confidentiality and protecting personally identifying information. The district states that the classroom teacher, social worker and paraprofessionals who support the students meet in the resource room to discuss information related to implementing the IEP and improving instruction for student progress following district policy and procedures. They state they utilize a clipboard case to store important IEP information (data collection sheets, student accommodations, BIP directions) for each student. This system allows the paraeducator to securely and confidentially carry the necessary documentation when accompanying the student to a general education class. While the clipboards initially contained the name of the students they now include the student's initials following the complainant talking with the principal about the names of student's being exposed on the data sheets.

Photo images of a student's clipboard and contents show that the student's behavioral data sheet contained the student's initials on October 29, 2024 in a clipboard case that is opened. The student's first name is contained on an undated behavior cheat sheet stored in a clipboard

case that is opened, The student's name and photos of the student on the student's token board in a notebook with a closing cover; a behavior intervention plan with the student's name and date of birth and parent's name is in an opened 3-ring notebook; student's schedule and the student's BIP and iPad plan with the student's initials are placed in an opened clipboard case.

The building principal and classroom teacher acknowledged during their November 18, 2024 interview that the complainant had spoken to each individually about concerns that student information could be exposed. The building principal stated that out of extra precaution the documents replaced the student's names with his or her initials. They stated that prior to the complaint speaking with the teacher and principal they already used a distinct color of clipboard case for each student, so the cases were not identifiable on the outside with any student. The building principal stated that this practice was to balance the need for privacy with all staff having convenient access to review and implement student behavior intervention plans and collect data wherever the student was in the building. The staff stated that at all times the clipboard cases were under the control of school staff and not left out or behind in unsecured parts of the building.

The building principal and classroom staff stated that token economy charts and visual schedules containing personally identifiable information are used directly by students during instruction whether in the resource room or general classroom. These teaching accommodations may include photos of the student to assist the student to transition to become a more symbolic communicator. Further the district staff stated that the students in some cases carried these accommodations since they used them for self-management.

The district staff stated during the November 18, 2024 interview that students are not in the general educational classes for academic instruction so the resource teacher and general education teacher schedule time to talk about the student as needed. Paraprofessionals implement the social, behavioral, management IEP goals using the materials contained in the clipboard cases. They further stated that when a conversation needs to occur about a student, they access the social worker's office and any phone conversations with parents or other staff, or agency can office in that office as well.

The District Policy Manual, Section 3000 Students, Directory Information Records Code 3820 defined the following as directory information "that is general in nature and is usually regarded as non-detrimental to the student, including the following: Name, address, e-mail address, telephone listing, date and place of birth, grade level, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, awards and honors received, and the most recent previous educational agency or institution attended by the student." The manual further stated, "Directory information may be released without authorization from the adult student, the student's parents, or the student's legal guardian." A parent may inform the district in writing that he or she does not want information about the student designated as directory information. The director of special education in an

email to the investigator confirmed that none of the parents in the classroom made this request.

Documentation provided by the district showed that all six paraeducators in the classroom completed a training on Confidentiality and Communication training as part of their orientation. In this training there is a training video with a review of FERPA and a statement, "Share student information only with staff responsible for the student." Another slide includes three bullets for student confidentiality, 1) protect student information from being disclosed, shared, released; 2) do not share student information regarding special education, exceptionality, characteristics; 3) protect student identities and special education status. The para training video associated with the district SPED Paraeducator Orientation specified that the IEP at a Glance document contains confidential information. Further, on the slide titled, "Relationship with Students and Parents" it is listed that a role of the paraeducator is to "respect the dignity and privacy of all students and families." Additionally, spreadsheets for each paraprofessional documented the date each took the courses and additionally, the paraprofessionals had completed training in Student Privacy Rights (FERPA), Paraprofessional Behavior Basics, Autism, and ESI: What School Staff Need to Know.

Conclusion

Two issues were considered for the investigation. First, whether the personally identifiable information was safeguarded and second, whether the district only allowed authorized persons with legitimate educational need to access the personally identifiable information.

Federal regulations at 34 C.F.R. §§300.610 through 300.626 protects the personally identifiable information (PII) in education records collected, maintained, or used under Part B of the IDEA. IDEA and FERPA define PII as: information that contains the name of the child, the child's parent, or other family member; the address of the child; a personal identifier, such as the child's social security number of student number; or a list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty. In this case it is found that the district safeguarded the student's PII by storing student data sheets and IEP documents in closing clipboard cases as described in the findings. Any materials that showed the image of a student were determined to be an instructional accommodation that the student used for self-management and was regularly carried by the student. Further, the classroom had secure locations and time allocated after school to discuss student information related to the student's IEP or instructional plan. Evidence was not found that the staff discussed personal student information in front of students or staff.

The second part of this investigation addressed FERPA and IDEA regulation 34 C.F.R. 99.31(a)(1)(i)(A) which permits disclosure of PII to school officials who the district has determined to have legitimate educational interests. A school official has a legitimate educational interest if the school official needs to review an education record in order to fulfill his or her professional responsibility

There is one exception. IDEA regulations 34 C.F.R. 300.622(b)(1) adds that parent consent is not needed when PII is released to school officials for the purpose of meeting the requirements of the IDEA. However, that does not mean PII can be given to all school officials when only one needs the information for the purpose of meeting the requirements of the IDEA. This regulation means that the release of information may be made to school officials who need the information for the purpose of meeting the requirements of the IDEA. When PII is released to school officials who do not need that information to fulfill his or her professional responsibility or to otherwise meet the requirements of the IDEA, a violation of both FERPA and IDEA results.

In this case it is found that PII was shared only with those with a professional responsibility for the student's education. The district created behavior cheat sheets so that those with a need to know had access by storing it in the clipboard cases which were transported by the staff. The paraprofessional staff training that occurred was inclusive of the responsibilities for guarding PII. As a part of the para training, they are instructed, "Share student information only with staff responsible for the student." This statement is defined as any staff member who is the teacher or supervising the student for any part of the school day could be considered "responsible for the student."

Based on the foregoing, it is found that USD #229 protected personally identifying information (PII) of the students in the resource room during the 2024-2025 school year and no violation occurred.

Issue Two

Did the district use accurate data to complete IEP progress reports for the first quarter of the 2024-2025 school year for the student?

Applicable Law

Federal regulations at 34 C.F.R. §300.320(a)(3)(i) states that a description of how the child's progress toward meeting the annual goals will be measured will be provided to the parents.

Analysis: Findings of Fact

The findings of Issue One are incorporated herein by reference.

The complainant alleged in the complaint that "data tracking is not done with fidelity. The operant definition for the trackable behavior is disregarded by staff based on their opinions. Other paras have expressed that they think the expectations put in place by the special education team and the student's father were too rigid and would prevent him from earning a reward. As a result, the student began receiving zero tallies."

The district responded that paras are trained, and the data is collected with fidelity, under the oversight of a district BCBA. The data collection sheets, and graphing of the collected data are used to accurately report progress to parents.

The IEP dated September 4, 2024 indicated that progress on goals will be reported with the same frequency as general education report cards. Three goals were identified with measurable goals

- a. By the end of the IEP year, given modeling, direct instruction and practice in social skills, [student] will demonstrate increased cooperative interactions with peers in a small group activity as measured by achievement of an 83% on a related rubric across 3 consecutive trials. Baseline = 8%, 17%, 8% across 3 consecutive trials
- b. By September 2025, when rated on the Replacement Behavior Rubric, [student] will score an average of 12/15 or (80%). Currently [student] scores 4/15 (27% overall); 1/5 on emotional dysregulation, 1/5 on time to regulate, 2/5 using a replacement behavior.
- c. By the end of the IEP year, given direct specialized instruction and opportunities to participate in problem solving practice, [student] will demonstrate an improved capacity to self-advocate and communicate about the factors that are making it difficult to for him to maintain emotional regulation at school as measured by achievement of 88% on a related rubric across four consecutive measured instances Baseline: Currently when triggered, [student] will elope from the area and hide. When approached by an adult, [student] becomes physically aggressive (hitting and kicking, throwing objects, and breaking items). On the related rubric, [student] scored 25%, 31%, 25%, 25%

The Progress Report dated October 11, 2024 used data collected on the behavior excel spreadsheet

The behavior graph and excel spreadsheet corroborated the scores reported on the Progress Reports.

Conclusion

The complainant's concern was that the student's data were not accurately collected due to those collecting data not being appropriately or adequately trained and not agreeing with the student's expectations. IDEA does not expressly provide regulation or guidance about accurate data collection. Instead, accurate data collection is paramount for reporting accurate progress to the parent and IEP team at regular intervals to ensure the student is making progress.

The Kansas Process Manual states: Once the IEP team has developed measurable annual goals for a child, the team must include a description of how the child's progress toward meeting the annual goals will be measured. This measure of progress will enable parents, children, and educators to monitor progress during the year, and, if appropriate, to revise the IEP to be consistent with the child's instructional needs. The idea is to use progress monitoring information in a formative way, to help with decision-making about instructional changes that may be needed. If a measurable annual goal is written correctly with the 4 components (behavior, criteria, condition, and timeframe) the requirement of how progress toward the goal

is measured is contained within the goal and no additional information is required. ... Whatever the method chosen, progress toward the goals must be monitored in the method indicated on the IEP and progress reports should include a description of the child's progress towards the child's measurable annual goals."

Each of the IEP goals contain the behavior, criteria, condition, and timeframe. Interview with the district staff described strategies for ensuring data were collected with fidelity. Progress Reports were written based on data entered into the excel spreadsheet. Initial training was provided by the district and ongoing training was described by the district staff.

Therefore, it is found that USD #229 used accurate data to complete IEP progress reports for the first quarter of the 2024-2025 school year for the student.

Issue Three

Did the district implement the IEP of student, specific to services during the 2024-2025 school year?

Applicable Law

According to Federal Regulations at 34 C.F.R. 300.323(c)(2) as soon as possible following development of the IEP, special education and related services are made available to the child in accordance with the child's IEP and State Regulations at (K.A.R. 91-40-16(b)(2) further define implementation as "once the IEP has been developed services are to be initiated within 10 school days after written parent consent is granted."

Analysis: Findings of Fact

The findings of Issue One and Two are incorporated herein by reference.

The complainant alleged that paras expressed that they thought the behavioral expectations of the student were too rigid and would prevent the student from earning rewards and from that point on the student received zero tallies. The complainant alleged that eight weeks into the school year the student had not been doing the same schoolwork as every other third grader despite earning rewards and receiving zero tallies as if the student had participated. The complainant wrote in the complaint that the staff did not strictly follow the behavior plan, track data, implement token boards and had not received adequate training to implement the IEP with fidelity. Finally, the complainant alleged that the student had told the social worker that he does not do work and that he hadn't completed phonics or mathematics since the first few weeks of school.

The district responded that they implemented the student's IEP with fidelity. They stated in their November 13, 2024 response that they have daily schedules and service logs documenting that service minutes were provided and that progress reports show the student's progress on each of the student's goals.

The IEP dated September 4, 2024 developed based on the September 4, 2024 Evaluation Report includes a behavior intervention plan, three goals and nine accommodations. The student received service minutes for special education, social work and occupational therapy. This IEP was revised on October 2, 2024 to revise placement to a more restrictive setting and decrease social work services while equally increasing special education minutes the same amount.

The student's daily schedule showed times in which the goals were taught, and that phonics and mathematics were taught. The behavior excel spreadsheet and reinforcement plan showed that data were collected on the behavior goal. The Progress Report dated October 11, 2024 reported progress to demonstrate that IEP goals and behavior intervention plan were implemented. Interview with the staff and student work showed that the accommodations were used.

Conclusion

It is found that the data, student work, progress notes support that the amended IEP dated October 2, 2024 was implemented. Interview with the district staff demonstrated that they were able to describe the evidence provided. Therefore, it is found that USD #229 implemented the IEP of the student, specific to services during the 2024-2025 school year.

Summary of Conclusions/Corrective Action

1. **ISSUE ONE:** A violation of §§300.610 through 300.626; 34 C.F.R §300.32; C.F.R. 300.623(a) and (c); 34 C.F.R §300.123; 34 CFR § 300.622(a); and 34 CFR § 99.31(a)(1) was not found, based on documentation and interview with parent and district staff. Corrective action is not required.
2. **ISSUE TWO:** A violation of 34 C.F.R. §300.320(a)(3)(i) was not found, based on documentation and interview with parent and district staff. Corrective action is not required.
3. **ISSUE THREE:** A violation of 34 C.F.R. §300.323(c)(2) was not found, based on documentation and interview with parent and district staff. Corrective action is not required.
34 C.F.R.

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)