

KANSAS STATE DEPARTMENT OF EDUCATION
SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT
FILED AGAINST
UNIFIED SCHOOL DISTRICT # 512
ON OCTOBER 19, 2023

DATE OF REPORT NOVEMBER 17, 2023

This report is in response to a complaint filed with our office by ----- on behalf of his son, ----- For the remainder of this report, ----- will be referred to as "the student." ----- will be referred to as "the parent." USD #512 will be referred to as "the district."

Investigation of Complaint

On October 25 and 27 and November 6, 2023, the complaint investigator spoke via telephone with Sherry Dumolien, Chief of Special Education for the district. The investigator spoke again with the Chief of Special Education on a video conference call on November 14, 2023. Also present during portions of that call were Stacy Cates, Dyslexia Consultant for the district, and Natalie Kaiser, Occupational Therapist. The investigator spoke by telephone with the parent on October 27, 2023.

In completing this investigation, the complaint investigator reviewed the following materials:

- Confidential Educational Evaluation dated November 30, 2017
- Confidential Educational Evaluation dated May 15, 2019
- Confidential Educational Evaluation dated February 9, 2021
- Prior Written Notice for Identification Initial Services, Placement, Change in Services, Change of Placement, and Request for Consent dated March 1, 2021 refusing placement in a private school setting
- Prior Written Notice for Identification Initial Services, Placement, Change in Services, Change of Placement, and Request for Consent dated March 1, 2021 offering "COVID-19 impact services"
- Email dated June 10, 2021 from the parent to the director of special education
- Notice of Meeting dated February 2, 2022
- IEP for the student dated February 23, 2022
- Letter dated March 1, 2021 from the director of special education to the parent
- Prior Written Notice for Identification Initial Placement, Change in Services, Change of Placement, and Request for Consent related to February 23, 2022 IEP signed by the parent on March 4, 2022
- IEP Progress Report for the student's February 23, 2022 IEP
- Notice of Meeting dated January 30, 2023

- Notice of Meeting dated February 17, 2023
- Draft Agenda for the February 24, 2023 IEP team meeting
- IEP for the student dated January 30, 2023 completed during February 24, 2023 IEP team meeting
- Prior Written Notice for Identification Initial Placement, Change in Services, Change of Placement, and Request for Consent dated January 30 and February 24, 2023
- Email dated March 7, 2023 from the student's special education resource teacher (co-teacher of the student's Physical Science class) to the parent
- Prior Written Notice for Identification Initial Placement, Change in Services, Change of Placement, and Request for Consent dated March 9, 2023
- Notice of Meeting dated April 4, 2023
- Team Meeting summary for April 4, 2023 IEP team meeting
- Team Meeting record dated April 4, 2023
- Notice of Meeting dated April 21, 2023
- Notice of Meeting dated May 1, 2023
- IEP Amendment dated May 17, 2023
- Amended IEP dated May 17, 2023
- Prior Written Notice for Identification Initial Placement, Change in Services, Change of Placement, and Request for Consent dated May 17, 2023
- High School Core Replacement Acknowledgement Form related to the proposed May 17, 2023 IEP Amendment
- IEP Amendment signed by the parent on June 5, 2023
- Email dated August 11, 2023 from the student's special education case manager to the parent
- Email dated August 16, 2023 from the parent to the student's case manager
- Agenda for September 18, 2023 team meeting
- Prior Written Notice for Identification Initial Placement, Change in Services, Change of Placement, and Request for Consent dated September 18, 2023
- Notice of Meeting dated September 27, 2023
- Agenda for October 6, 2023 IEP team meeting
- Prior Written Notice for Identification Initial Placement, Change in Services, Change of Placement, and Request for Consent dated October 9, 2023
- IEP for the student dated October 20, 2023
- Revocation of Consent for Particular Special Education and Related Service(s) Placement(s) dated October 20, 2023
- Prior Written Notice for Identification Initial Placement, Change in Services, Change of Placement, and Request for Consent dated October 20, 2023

- All email correspondence regarding the student for the period of October 19, 2022 through October 19, 2023

Background Information

This investigation involves an 17-year old boy who is enrolled in the 11th grade in his neighborhood high school.

The student was initially evaluated to determine his eligibility for special education support in May 2010 at age 3. The student was determined eligible for support under the category of "Sound System Disorder" - - a special education categorical designation used by the state of Missouri where he was evaluated. The diagnostic category includes students who demonstrate a "difficulty or combination of difficulties with perception, motor production, or phonological representation of speech sounds and speech segments—including phonotactic rules governing permissible speech sound sequences in a language."

The student was reevaluated in February 2011 while receiving services in Early Childhood Special Education and was determined at that time to have met criteria to be identified as a student with a Developmental Delay in the area of communication. While in Kindergarten, the student was again reevaluated and met the Missouri criteria as a child with a "Sound System Disorder."

The student received special education support in Raytown, Missouri from the age of 3 years through second grade. He was enrolled in one school for Kindergarten and first grade, transferring to a second school for second grade.

During the second semester of his second grade year, the student was once again re-evaluated and was determined to have met Missouri Department of Education's Special Education eligibility criteria for Specific Learning Disability in the areas of basic reading, reading fluency, reading comprehension, written expression, and mathematics calculation.

Beginning in his third grade year, the parents enrolled the student in Horizon Academy, a private school in Roeland Park, Kansas which, according to its website, emphasizes the daily use of the Orton-Gillingham Approach to phonetic instruction across all curriculum areas for students diagnosed with dyslexia. The school also uses the "Multisensory Math Approach" which - according to the school's website - "advocates a Concrete-Representational-Abstract Instructional Sequence and explicit language to make math concepts memorable."

In Spring 2017, while attending 4th grade at the private school, the student was evaluated through an area hospital. As a result of this evaluation, the student was given diagnoses of Attention Deficit/Hyperactivity Disorder (ADHD); Specified Anxiety Disorder; Multiple Specific Learning Disabilities (Dyslexia and Dysgraphia or developmental coordination disorder) and Language Disorder, specifically a moderate impairment in receptive language and a severe

impairment in expressive language. The student has also been diagnosed with short stature and is followed by the Endocrine Clinic at an area hospital.

The National Institute of Neurological Disorders and Stroke, a division of the National Institute of Health, defines attention deficit hyperactivity disorder (ADHD) as

"...a neurobehavioral disorder marked by trouble controlling impulsive behavior, difficulty paying attention, or overactivity. It is one of the most common neurodevelopmental disorders of childhood... [ADHD] interferes with a person's ability to stay on task and maintain focus." (See ninds.nih.gov.)

The IDA (International Dyslexia Association) defines "Dyslexia" as follows:

"Dyslexia is a specific learning disability that is neurobiological in origin. It is characterized by difficulties with accurate and/or fluent word recognition and by poor spelling and decoding abilities. These difficulties typically result from a deficit in the phonological component of language that is often unexpected in relation to other cognitive abilities and the provision of effective classroom instruction. Secondary consequences may include problems in reading comprehension and reduced reading experience that can impede growth of vocabulary and background knowledge." (See <https://dyslexiaida.org>.)

Diagnosis of dyslexia is a clinical decision made by a doctor, clinical psychologist, neurologist, or other clinical professional. The identification of a child with a "Learning Disability" - the term used by the Individuals with Disabilities Education Act (IDEA) is made by a school team through a comprehensive evaluation. The term "Learning Disability" is used in the IDEA to describe children who have a disability in the areas of reading, writing, or math.

"Dysgraphia," the condition of impaired letter writing by hand, is, according to the IDA, often present in individuals diagnosed with dyslexia. The DSM-5 (Diagnostic and Statistical Manual - 5th edition) - the handbook used by health care professionals in the United States and much of the world as the authoritative guide to the diagnosis of mental disorders - does not define dysgraphia as a separate disorder but includes it - along with dyslexia - under the "specific learning disorder" category.

The DSM - 5 defines a Language Disorder as:

"difficulties in the attainment and use of language due to comprehension or discourse shortfalls."

In an email to the investigator dated November 7, 2023, the parent reported that the student worked with a private tutor beginning in June 2017 through April 2019 for two 2-hour sessions per week focusing on reading, spelling, and math. According to a summary developed by the provider, the tutor used the Susan Barton Reading and Spelling System with the student, a tutoring system for students who struggle with reading, spelling, and writing due to dyslexia.

For the 2017-18 school year, the student's fifth grade year, he was enrolled for the first time in his current district of residence. In November of 2017, the student was re-evaluated by the district.

A cognitive assessment conducted at that time placed the student at the 5th percentile overall with a pattern of scores consistent with students who have been diagnosed with Dyslexia. The student's Verbal Comprehension Index fell at the 7th percentile, and he had low scores on subtests that measure working memory and processing speed, but he performed in the average range in areas related to spatial processing, visual-motor integration, and novel problem solving. Reading skills were at that time determined to be at or below the first percentile as were math and written language skills. Significant deficits were also seen with regard to the student's expressive and receptive language.

The student received special education support from the district for the remainder his fifth grade year. The student's IEP team determined that he should receive 240 minutes of special education support in a special education setting per day with 45 minutes per day of additional support in the general education setting. He received 30 minutes of speech support 3 times per week and 30 minutes of OT support per week.

For his sixth grade year, the student received more support in the general education setting (75 minutes per day) and 165 minutes per day of pull-out special education services in addition to the previously established speech and OT support. The student was re-evaluated in preparation for his transition to middle school. Testing showed that the student continued to struggle with reading, math, and written language skills placing him well below his grade level peers.

In seventh grade, the student was placed for the first three quarters of the 2019-20 school year in what is now called the "Intensive Resources" classroom which provided a highly individualized program to meet the student's needs. In mid-March 2020, Kansas schools were closed for the remainder of the school year due to COVID-19.

Beginning in the Fall of the student's 2020-21 eighth grade year, students in the district were offered the option for either in-person or remote learning because of ongoing concerns regarding COVID-19. The student's parents opted to have the student participate remotely from September of 2020 through February 2021. Materials were provided to the family in a combination of paper/pencil format delivered to their door and the use of an online platform. According to the director of special education for the district, special education services were available to the student on a daily basis despite the pandemic.

In February 2021, the parent requested that the district pay for the student to return to the private school he had attended for third and fourth grade. It was the position of the parent that the district had failed to provide the student with a free appropriate public education (FAPE) during the COVID-19 pandemic. The district refused the parent's request stating that

the district was able to implement services to target deficits identified by the re-evaluation completed on February 9, 2021. The district offered up to 30 hours of "COVID-19 impact services" for the student during the summer following the 2020-21 school year that would target math and reading. The parent provided written consent for these services on March 29, 2021.

The parent states that the student's experience in the middle school (7th and 8th grade) was negatively impacted by changes in staff although those changes did not result in any missed services for the student. The student continued to struggle with reading and math.

Issues

In his complaint, the parent identified two issues.

Issue One

By failing to appropriately address the student's limited progress in reading and math, the district has denied the student a free appropriate public education.

Parent's Position

It is the position of the parent that the student's failure to make progress in his reading skills is the result of the district's failure to provide him with proper specially designed instruction. The parent contends that the services and supports provided to the student are not meeting his educational needs, and the student has made only minimal progress in the development of reading skills since entering the district in 2017. The parent asserts that the district should provide a private placement for the student as well as private tutoring to enable the student to progress to at least a 7th grade level in reading and math skills. The parent further asserts that the district should commit to offering the student services through age 21 to compensate for the past four years when skills were allegedly lost or only trivial progress was made.

District's Position

The district contends that it has developed, implemented, and adjusted an educational program for the student that has promoted challenging expectations and has ensured participation and progress in the general education curriculum. It is the position of the district that during the time period covered by this complaint, there have been numerous changes to the student's IEP and continued efforts to adapt and adjust instruction and services to meet the student's needs.

Applicable Statutes and Regulations

A formal complaint must allege that a district has - within not more than one year prior to the date the complaint is received and filed with the commissioner of education - violated a state or federal special education law or regulation. (See K.A.R. 91-40-51(b).)

Federal regulations, at 34 C.F.R. 300.101, require states to ensure that a free appropriate public education (FAPE) is made available to all children with disabilities residing within the state. Accordingly, Kansas regulations at K.A.R. 91-40-2(b)(1) require that each school district makes FAPE available to each child with a disability residing in its jurisdiction. Federal regulations, at 34 C.F.R. 300.17, define FAPE, in part, as special education and related services provided in conformity with an Individualized Education Program (IEP).

At 34 C.F.R. 300.320, federal regulations define an IEP as

"a written statement for each child with a disability that is developed, reviewed, and revised at a meeting...that must include...a statement of measurable annual goals...designed to meet the child's needs that result from the child's disability...and a statement of the special education and related services and supplementary aids and services] to enable the child to be involved in and make progress in the general education curriculum, and meet each of the child's other needs that result from the child's disability."

The IEP must be reasonably calculated to enable the child to make "progress appropriate in light of the child's circumstances" (*Endrew F. v. Douglas County School District (137 S. Ct. at 999)*) and should aim to enable the student to make progress toward the student's annual IEP goals and in the general education curriculum, but there is no guarantee of progress.

A student's IEP is to be reviewed at least once every 12 months, to determine whether the annual goals for the child are being achieved and to revise the IEP as appropriate. The review and revision of the IEP is to address any lack of expected progress toward the annual goals and in the general education curriculum, where appropriate. If the student is not making progress or the progress is not sufficient to meet the annual IEP goals and make appropriate progress in the general education curriculum, the IEP team should meet to discuss the lack of progress and consider meeting more frequently than once a year.

Investigative Findings

As of October 19, 2022 - 12 months prior to the date this complaint was received - the student was being served under a February 23, 2022 IEP. The parent had participated in the development of that IEP and had provided written consent for the changes in the delivery of the following services directly related to the areas of reading and math:

- 180 minutes daily of specially designed instruction in the general education setting to support math, science, social studies, and ELA (English Language Arts);
- 45 minutes once a week of Study Skills in a special education setting to address self-advocacy and to provide explicit instruction in math concepts and to allow the student to spend 15-20 minutes working on a typing program;
- an additional 90 minutes twice a week of Study Skills in a special education setting to address self-advocacy and to provide explicit instruction in math concepts and to allow the student to spend 15-20 minutes working on a typing program;

- 45 minutes once a week for a Direct Reading Class in a small group special education setting for targeted work on reading skills;
- an additional 90 minutes twice a week in the Direct Reading Class.

Under the February 2022 IEP, the student continued to receive speech/ language services as well as transition services and Occupational Therapy (OT) support.

The IEP included goals to address areas where the team had determined specially designed instruction was required:

- expressive and grammatical language;
- listening comprehension;
- math;
- writing;
- self-advocacy;
- typing; and
- reading .

Baseline data related to the student's math goal showed that if given a verbal prompt as to which mathematical operation a problem required, the student was able to solve the problem with 100% accuracy using a calculator. In the area of writing, he was able to produce an average of 5 sentences with 5-6 word length when writing informative/explanatory text. The student had an average of 86% on listening comprehension tasks that required him to listen to grade level content passages and answer open-ended and multiple choice questions. His reading goal required him to read multi-syllabic words containing open and closed syllables, long vowel/silent /e/ words, and predictable vowel teams with 90% accuracy.

The February 2022 IEP specified accommodations/modifications for testing, instruction, assignments, attention to task, and communication. Instructional accommodations/modifications included the following:

- frequent monitoring/checks for understanding;
- modified curriculum at the student's instructional level;
- scaffold explicit instruction to teach missing skills;
- teach use of the calculator;
- prompt use of math cards;
- repeat instructions if more than 2 steps;
- provide visual aids such as flow charts, diagrams, and other graphic organizers for main idea and details and model use of these aids;
- provide guided class notes or a copy of completed notes;
- read aloud instructions and assignments and provide audio version of reading assignments;

- provide frequent breaks;
- pre-teach key vocabulary (look it up, use it in a sentence, provide similar words); and
- use of a checklist for legibility and mechanics.

Per the February 2022 IEP, the student was given extra time to complete assignments. His assignments and projects were modified in length and complexity. He was allowed to use oral responses which could be submitted as an audio or video file. He was prompted to use the speech to text tool on his MacBook and to use grammar and spell check on his written work.

The IEP Progress Report for the February 2022 IEP shows that the student made adequate progress toward attainment of his math goal, consistently performing above his goal level of 70% on targeted skills during all monitoring periods for the February 2022 IEP. By the December 2022 monitoring period, the student was performing above his goal level with regard to his written products. Over the final three monitoring periods of the IEP cycle, the student earned a score of 85% or above on listening comprehension tasks (with a goal of 86%). Though at the time of October 2022 monitoring, the student had been refusing to work on his reading goal, by December 2022 he had been changed to a different reading program and was making progress.

The annual review of the student's IEP was conducted over two days - January 30 and February 24, 2023. A "Draft Agenda" for the February meeting showed that the team would focus on the following:

- Math goals, proposed curriculum and services as well as the grading system and environment for the delivery of services;
- updated speech/language information;
- OT service delivery and goal;
- the class schedule for the student for the 2023-24 school year;
- Dyslexia consultant information; and
- group/social interactions.

During the period while the student's IEP team was completing the annual IEP revision, the student continued to receive the following support for reading and math (in addition to ongoing speech/language and OT services):

- 180 minutes of specially designed instruction in a general education setting to address reading, writing, math, and executive functioning (the student having completed the typing program);
- 135 minutes per week of specially designed instruction in a special education for the Direct Reading Class; and
- 135 minutes of specially designed instruction in the special education setting for Study Skills to address executive functioning.

The parent provided his written consent on March 2, 2023 for proposed changes to the student's IEP resulting from discussion at the January and February meetings. Those changes included the following:

- updating the student's goals;
- moving the student to a pass/fail grading approach for Science;
- moving the delivery of special education services for math for the student from the general education setting Algebra/Geometry classroom to the special education setting for Individualized Math for the remainder of the school year;
- reducing in-class general education support for English and Science from 90 to 60 minutes on block days and 30 minutes on "traditional" days;
- increasing in-class general education support to include social studies for a total of 150 minutes a week beginning August 15, 2023;
- removal of a special education study skills class (225 minutes per week) beginning August 15, 2023;
- adding an Introduction to Careers class for vocational skill development (225 minutes per week) starting August 15, 2023; and
- changing the setting for the delivery of math support from the special education setting back to the general education setting beginning August 15, 2023.

Those changes impacting the remainder of the 2022-23 school year were implemented beginning March 7, 2023.

According to meeting notes from a subsequent meeting in April 2023, the parents made a request at the February 24, 2023 IEP team meeting for the district to pay for the student to return to the same private school he had attended for third and fourth grade if the newly proposed IEP goals, schedule, curriculum modifications, and accommodations did not result in "substantial progress" by the end of the 2022-23 school year. The parents also expressed concern regarding the district's ability to place the student in the "least restrictive environment" (LRE) although the meeting notes do not specify what that environment would be.

On March 9, 2023, the parent was provided with prior written notice of the district's proposal for a change to the student's IEP, moving "Consult with Dyslexia Specialist" listed as an accommodation to the "Supports for School Personnel" section of the student's IEP. The parent gave written consent for that change on April 4, 2023.

On April 4, 2023, a team meeting was held to discuss concerns presented after the February 24, 2023 IEP team meeting. During that meeting, the team discussed the parent's previously stated LRE concerns as well as concerns regarding the student's test preparation and para support for testing, staff qualifications and availability, meeting scheduling and organization, and the student's participation in clubs. The parents also requested that the student's case manager be changed.

In response to the parents' concern, the district agreed to address test preparation with staff working with the student, noted that the student had begun participating in a Ping Pong Club, agreed to make contact with staff to explore options for the student to work with animals in the Environmental Ed class, and provided contact information to enable the parent to get more information on how the student might become involved in working on the Stage Crew for plays for the 2023-24 school year.

During the April 4, 2023 meeting, the parents expressed particular concern that the student's participation in such classes as his 1:1 Individual Math class was restricting his involvement with his peers. The district stated that it would search for other students with needs similar to those of the student in the area of math so that the student would be able to interact with peers. The district noted that it had explored having the student participate in the AA class (now known as "Intensive Resources" class) for math, but data showed that the student would be functioning at a higher skill level in math than his peers in that class, so Individualized Math was more appropriate. The district also noted that the student would be enrolled in the Consumer Math class with peers for the 2023-24 school year.

The district agreed to look at the student's anticipated schedule for the 2023-24 school year to attempt to place the student in core classes in the morning to the greatest extent possible in order to maximize his attention and energy.

According to the notes from the April 4, 2023 meeting, despite staffing shortages in the district as a whole, the student had been provided with all of the special education services called for in his IEP. The district also told the parents that the teacher leading the student's Directed Reading group was a certified special education teacher who had taken specialized training to enable her to teach the student's class. The district agreed to change the student's case manager for the 2023-24 school year. The district also informed the parent that under his IEP, the student was earning a "Pass/Fail" grade for science and receiving significant modifications so that the work was more meaningful for his learning.

As a result of the April 4, 2023 IEP team discussion, the student's January 30, 2023 IEP was amended as follows:

"Beginning 8/15/23 and for the duration of [the student's] annual IEP, special education teachers will provide specially designed instruction in the special education setting for ELA [English Language Arts] and math for 90 minutes one day per week (45 minutes each) and 180 minutes two days per week (90 minutes each) in core replacement courses. He will be in the core replacement ELA course instead of the directed reading course to address his basic reading needs.

Beginning 8/15/23 and for the duration of [the student's] annual IEP, special education teachers will provide specially designed instruction in the general education setting for science and social studies for 60 minutes one day per week (30 minutes for each class) and then 90

minutes two days per week (45 minutes for each class). The change is due to [the student] receiving his ELA and math classes in the special education setting instead of the general education setting."

The parent was provided with prior written notice outlining this proposed change as well as a copy of the "Core Replacement Acknowledgement" form which informed the parent that "core replacement will affect the student from completing the requirements for acceptance to a 4-year university or college [and] inability to meet NCAA guidelines for collegiate athletics." The parent provided his written consent for the action on June 5, 2023. The prior written notice form stated that the team considered keeping the student in co-taught core classes for ELA and math but determined that:

"[The student's] level of functioning with academics is below his peers. The IEP team agreed that the special education setting for core ELA and math will benefit him and allow him to attain growth with his academics... because [the student] requires extensive, repeated, individualized instruction and support beyond what is able to be provided in the general education setting."

The student's January 30/February 24, 2023 IEP contained seven annual goals developed by the team to support areas requiring specially designed instruction. Those goals address the following:

- reading fluency;
- writing;
- independent task initiation;
- math;
- vocabulary;
- listening comprehension;
- independently using a writing checklist to self-check his written products.

During the January/February 2023 annual review, the IEP team developed the following annual goal to address the student's reading needs:

"By 1/29/24, when given a grade level passage, [the student] will read grade level text orally at 100 words correct per minute, as measured by an Oral Reading Fluency (ORF) and monitored by a special education teacher."

The student's progress on this goal was monitored in March, May and October 2023. The student was reading 79 words per minute as of March 21, 2023, and he was reading 84 words per minute as of May 21, 2023. However, when progress was monitored on October 17, 2023, he was only averaging 77 words per minute.

At the January/February 2023 annual review, the IEP team had also developed a new math goal for the student:

"By 1/29/24. [the student] will be able to solve real world problems by adding, subtracting, multiplying, and dividing decimals and percents with 75% accuracy as measured by math probes."

Progress was monitored on this goal in March, May, and October 2023. The student was solving problems with 56% accuracy on March 20, 2023 and with 85% accuracy by May 23, 2023. However, October 17, 2023 monitoring found he was solving addition problems with 75% accuracy, and was 50% accurate with subtraction, multiplication, and division problems. As noted above, the student had been moved to a special education setting for math as of the start of the 2023-24 school year. Instruction for the first quarter had focused on addition problems. That focus shifted to subtraction for the second quarter.

The student withdrew failing from his Algebra/Geometry class second semester of 10th grade, but passed all other courses, earning the following grades:

- Auto Essentials: Semester 1 = D
- Direct Reading: Semester 1 = B; Semester 2 = A
 - 3 students in this class working with one teacher and one paraeducator
- English/Language Arts: Semester 1 = B; Semester 2 = C
 - 11 students in this class co-taught by a general education teacher and a special education teacher
- Health Ed: Semester 2 = B
- Individualized Math: Semester 2 = B
 - one-on-one instruction
- Algebra/Geometry: Semester 1 = C; Semester 2 = Withdrew failing and transferred to Individualized Math
- Physical Science: Semesters 1 and 2 = D
 - co-taught by a general education teacher and a special education teacher
- Robotics: Semesters 1 and 2 = B
- Study Skills: Semesters 1 and 2 = B
 - 15 students with one special education teacher and one paraeducator

Accommodations/modifications were provided for the student in all of his elective classes.

A team meeting was held on September 18, 2023. The agenda for that meeting shows that the team was planning to review the student's progress in his classes since the beginning of the school year. The parent expressed concern during the meeting that the student was bored with the materials in his Careers class and had a negative perception of the other students in the class.

Another IEP team meeting was held on October 6, 2023. A prior written notice form summarizing the discussion was provided to the parent on October 9, 2023. As stated on the

prior written notice form, the team discussed the student's Intro to Careers class participation as well as the student's Individual Math Goals class and his Individual Goals ELA class. The special education teacher stated that current testing data placed the student at a third grade level in reading. The parent advocate pointed out that the student was operating at a second grade level when he was tested in 2017.

On October 20, 2023, the parent revoked consent for the student's participation in the special education Intro to Careers class which had been providing the student with exposure to specially designed instruction related to a pre-employment curriculum. The student had been enrolled in that class for a total of 230 minutes each week.

For the first semester of his 11th grade year, the student is currently earning the following grades:

- Wood Design: C
- Individualized Math: C
 - 8 students work with one special education and one paraeducator
- US History: B
- Dark Room Photography: F first quarter with a D to date for second quarter
- Environmental Ed: D first quarter, failing second quarter
 - taught by a general education teacher with support from a paraeducator
- Directed Reading: A
 - 6 students work with one special education teacher and one paraeducator

Again this school year, accommodations/modifications have been provided to the student in all of his elective classes.

The team is addressing the student's current non-passing grades. A plan was developed during parent-teacher conferences to allow the student to have opportunities for reteaching or other support.

Summary and Conclusions

In this complaint, the parent alleges a violation of FAPE because the student's reading and math skills have not progressed substantially since they were evaluated in 2017 and 2019. A formal complaint must allege the occurrence of a violation of state and/or special education statutes or regulations within the 12-month period prior to the date the complaint is received - in this case, between October 19, 2022 and October 19, 2023, so this investigation focused primarily on that time period. Context is, however, important in determining whether such a violation can be substantiated.

The student was first determined to have a disability when, at age three, his language skills warranted the provision of special education services in an Early Childhood Special Education program. He was subsequently found eligible for services as a child with a developmental

delay in the area of communication. As a Kindergarten student, he met the Missouri definition of a student with a Sound System Disorder. By second grade, he had been determined to be eligible for special education services under the category of Specific Learning Disability.

A school district in the state of Missouri provided the student with special education services through grade three, but for fourth grade, the parents opted to place the student in a private school where the entire focus was on meeting the needs of students with dyslexia through a specialized curricular approach tailored specifically for the unique learning needs of that population.

In the Spring of his fourth grade year, the student was evaluated through a local hospital and was given the following clinical diagnoses: Attention Deficit/Hyperactivity Disorder (ADHD); Specified Anxiety Disorder; Multiple Specific Learning Disabilities (Dyslexia and Dysgraphia or developmental coordination disorder) and Language Disorder, specifically a moderate impairment in receptive language and a severe impairment in expressive language.

While these neurological disorders were less visible in this student than disabilities such as blindness or paralysis might be in another child, they proved to be no less impactful on the student's learning - particularly in areas related to language. A cognitive assessment conducted in 2017, shortly after the student was enrolled in his current district, showed that the student demonstrated a profile frequently seen in students who have been diagnosed with dyslexia wherein language related cognitive performance falls significantly lower than visual-spatial skills. Additionally, the student's short term memory skills were below average.

The student transferred back to the public school setting for fifth grade, the point where most students were moving from learning to read to using their acquired reading skills to learn in other curricular areas. Academic testing completed in November 2017 showed that the student demonstrated profound delays in his reading and math skills, falling below the 1st percentile in most areas - despite having received special education services beginning at age 3 and after having been enrolled for two years in a private school specifically focused on meeting the needs of students with dyslexia.

For the next two years of elementary school, the student continued to receive special education services to address his reading, writing, and math deficits, but he was also being exposed to a broader curriculum along with his general education peers. In order for the student to be successful in that broader curriculum, the district implemented supportive modifications and accommodations.

In addition to the services provided by the school district, the parents employed a private tutor who, for four hours a week, worked with the student from June 2017 to April 2019 in the areas of reading and math using a curriculum tailored for students with dyslexia.

For seventh, eighth, and ninth grades, the district continued to provide special education services and implemented accommodations and modifications.

In February 2022, during the student's ninth grade year, the district conducted an annual review of the student's IEP and - with the participation of the parent - developed a new IEP. The parent gave written consent for the services outlined in that IEP which were being implemented as of October 19, 2022, twelve months before this complaint was received.

The student made progress on all of the goals established in the February 23, 2022 IEP. Despite the continuing impact of his disability on the acquisition of reading and math skills, the student was enrolled in - and passed - general education classes for the first semester of the 2022-23 school year with the implementation of accommodations and modifications. The district continued to provide specially designed instruction to improve reading and math skills, and the student had progressed to a third grade level in both areas.

New goals and services were proposed under a new IEP developed over two meetings in January and February of 2023. Again, the parent participated actively in the development of the IEP. He gave written consent for the services proposed by the district as well as for subsequent revisions to those services resulting from discussions during numerous IEP team meetings conducted over the following months. The student continued to make progress on achieving his annual goals.

Through the IEP team meeting process, the decision was made to move the student to a more restrictive setting for the delivery of math instruction when it became apparent during the second semester of the 2022-23 school year that the general education setting was no longer the most appropriate placement for the student. There was ongoing discussion by the team regarding the best approach to the student's specialized reading instruction.

With modifications and accommodations, the student was able to continue to participate in and pass elective classes, but when the student was not being successful in two of those elective classes after the first quarter of the 2023-24 school year, the IEP team promptly began exploring additional accommodations.

A student's IEP must be reasonably calculated to enable the child to make progress appropriate in light of the child's circumstances and should aim to enable the student to make progress toward the student's annual IEP goals and in the general education curriculum. However, special education laws do not consider a child's IEP to be a guarantee of progress.

Recognizing the wide diversity of students receiving special education services, neither state nor federal statutes and regulations require that a student reach any specific performance level in order for a student to have been considered to have received a FAPE. For a child to be considered to have received a FAPE, a district must develop, review, and implement an IEP designed to meet the child's needs that result from his or her disability. The district must provide the special education and related services and the supplementary aids and services needed to enable the child to be involved in and make progress in the general education curriculum, and meet each of the child's other needs that result from the child's disability.

Ample evidence has been presented through the course of this investigation to show that - in light of the special circumstances associated with this student - the district has met its responsibility with regard to the provision of a FAPE. A violation of special education statutes and regulations *is not substantiated* on this issue.

Issue Two

The district has failed to provide the student the Occupational Therapy and Assistive Technology services needed to enable the student to make progress toward meeting IEP goals related to handwriting.

Parent's Position

It is the position of the parent that the student has not been provided with any assistive technology support to assist with his writing despite alleged regression in skills and a statement by district staff that "the educational model shifts towards the use of assistive technology" when a student has dysgraphia.

District's Position

The district contends that the student has received Occupational Therapy services to address his handwriting needs. The district notes that while Assistive Technology (AT) services are not included in the student's IEP, all students at the high school are issued a Macbook with embedded capabilities.

Applicable Statutes and Regulations

Federal regulations, at 34 C.F.R. 300.101, require states to ensure that a free appropriate public education (FAPE) is made available to all children with disabilities residing within the state. Accordingly, Kansas regulations at K.A.R. 91-40-2(b)(1) require that each school district makes FAPE available to each child with a disability residing in its jurisdiction. The regulations, at 34 C.F.R. 300.17, define FAPE, in part, as special education and related services provided in conformity with an IEP.

Investigative Findings

When the student's IEP team met for the annual review of the student's IEP on February 23, 2022, the parent (according to the "Parent questions/concerns to be addressed during the IEP meeting" section of the IEP) expressed concern regarding:

"... the student's ability to write legibly in a manner consistent with other students his age. His handwriting issue has been discussed multiple times with the school over the last 3 years and both parents are concerned there has not been meaningful progress to bring it to an appropriate level. The parents are asking for more focus on this area in his normal classes as well as with the Occupational Therapist."

The "Special Education and Related Services to be Provided" portion of the student's February 23, 2022 IEP shows that the team determined the student should receive 15 minutes of OT services twice a month in the special education classroom setting as well as 15-minutes twice monthly of indirect OT services.

The IEP team - which included the parent - developed an annual goal related to the continued development of the student's typing skills:

"Within 36 weeks, in order to legibly complete classroom writing tasks, [the student] will use two hands to type 5 sentences with 80% accuracy."

Additionally, according to the "Accommodations/Modifications/Supplementary Aids and Services" section of the student February 23, 2022 IEP, the student would provide oral responses as an alternative to written work. He was also to be prompted to use the speech to text tool on his MacBook.

When the goal was monitored in May 2022, the student was using a typing program and making adequate progress. His speed had increased to 6-8 words per minute with accuracy ranging from 85-100%. He was also working on creating a legible signature, and was making progress.

By October 2022 monitoring, the student was able to use two hands to type and was typing up to 5 sentences with an average of 77% accuracy. When the student's progress was monitored on January 3, 2023, the student had met his goal and was able to type with an average accuracy of 97%.

When the student's IEP team met on January 30, 2023 for the student's annual review, the IEP team - which again included the parent - determined that the student would receive increased OT services. Specifically, the team determined that, in addition to the indirect OT services already being provided and the twice monthly OT support offered in the special education setting, the student would be provided with 15 minutes twice a month of direct services in the general education classroom setting between January 30 and May 24, 2023 and again from August 15, 2023 to January 29, 2024.

To increase his overall legibility for writing activities, the team developed the following goal to encourage the student to self-edit his written work:

"By the end of the IEP year, [the student] will initiate utilizing a writing checklist with no more than 1 verbal prompt to self-edit his work and increase overall legibility for writing activities on 2 out of 3 opportunities."

Additionally, the team included in the student's January 30, 2023 IEP a number of accommodations/modifications/supplementary aids and services to address the student's handwriting disability. The student would be allowed extra time to complete both assessments and assignments. His assignments and assessments would be reduced in complexity and

length. A checklist for legibility and mechanics would be provided. The student would be allowed to submit an audio or video file or another "visual" of the assignment as an alternative to written work. He would be prompted to use the "speech to text tool" on his MacBook and to use the microphone when dictating with a note that the "inline mic built into earbuds work well."

According to the OT providing services to the student, the student was able to generate adequate writing samples during therapy sessions and inconsistently demonstrated adequate writing techniques. The therapist reported that she has provided a finger spacing tool for the student's use as well as a variety of adaptive paper and has coached the student on highlighting baseline and adding lines to classroom worksheets/workbook to assist him on writing tasks. The OT has also worked with the student on how to use text to speech programs. She created a 7-point writing checklist for the student to use in self-editing.

The student's progress toward attainment of his IEP goal was monitored in March and May 2023. As of March 21, 2023, the student was still requiring more than 1 verbal prompt to self-edit his written work. When progress was monitored in May 2023, it was noted that:

"[The student] requires moderate verbal prompting with a minimum of 7 verbal prompts to initiate using the writing checklist to self-check his work. Once using the checklist [the student] requires assistance to thoroughly and accurately check over his work. After corrections have been made using the checklist [the student's] overall legibility does improve."

On September 18, 2023, an IEP team meeting was held. The parent expressed concern with the student's progress with regard to letter formation and with the use of lines and spacing. The parent provided consent for a change to the services outlined in the student's January 30, 2023 IEP. According to the prior written notice form, the provision of OT services to the student would move from a general education setting to a special education setting because the student was no longer participating in the general education ELA classroom where those services had previously been provided.

When progress toward attainment of the student's annual goal was monitored on October 17, 2023, adequate progress was noted. According to the student's IEP Progress Report,

"[The student] requires one verbal prompt to initially use the checklist and requires a minimum of one verbal prompt for each of the seven subsections of the checklist in order to self-edit his work. When prompted to fix his work, he typically will start with fixing the capitalization errors and then punctuation."

Summary and Conclusions

With the participation of the parent, the district has developed and revised two IEPs which included goals related to the student's handwriting. The parent gave written consent for OT services specified in these IEPs and for related amendments to these services, all of which

have been implemented by the district. The student met the typing goal established in the student's February 2022 IEP which was implemented using a MacBook and typing programs provided by the district. He has made progress on the IEP goal established in the annual IEP developed over two meetings in January and February 2023. The student continues to use the MacBook provided by the district to complete many of his written assignments.

The district has provided the OT services specified in the student's February 23, 2022 and January/February 2023 IEPs and has provided the student with the assistive technology needed for the implementation of those goals and services. A violation of special education statutes and regulations *is not substantiated* on this issue.

Corrective Action

Information gathered in the course of this investigation has not substantiated noncompliance with special education statutes and regulations on the issues presented in this complaint. Therefore, no corrective actions are ordered.

Investigator



Diana Durkin

Complaint Investigator

Right to Appeal

Either party may appeal the findings or conclusions in this report by filing a written notice of appeal with the State Commissioner of Education, ATTN: Special Education and Title Services, Landon State Office Building, 900 SW Jackson Street, Suite 620, Topeka, KS 66612-1212. The notice of appeal may also be filed by email to formalcomplaints@ksde.org The notice of appeal must be delivered within 10 calendar days from the date of this report.

For further description of the appeals process, see Kansas Administrative Regulations 91-40-51(f).

K.A.R. 91-40-51(f) Appeals.

(1) Any agency or complainant may appeal any of the findings or conclusions of a compliance report prepared by the special education section of the department by filing a written notice of appeal with the state commissioner of education. Each notice shall be filed within 10 days from the date of the report. Each notice shall provide a detailed statement of the basis for alleging that the report is incorrect.

Upon receiving an appeal, an appeal committee of at least three department of education members shall be appointed by the commissioner to review the report and to consider the information provided by the local education agency, the complainant, or others. The appeal process, including any hearing conducted by the appeal committee, shall be completed within 15 days from the date of receipt of the notice of appeal, and a decision shall be rendered within five days after the appeal process is completed unless the appeal committee determines that exceptional circumstances exist with respect to the particular complaint. In this event, the decision shall be rendered as soon as possible by the appeal committee.

(2) If an appeal committee affirms a compliance report that requires corrective action by an agency, that agency shall initiate the required corrective action immediately. If, after five days, no required corrective action has been initiated, the agency shall be notified of the action that will be taken to assure compliance as determined by the department. This action may include any of the following:

- (A) The issuance of an accreditation deficiency advisement;
- (B) the withholding of state or federal funds otherwise available to the agency;
- (C) the award of monetary reimbursement to the complainant; or
- (D) any combination of the actions specified in paragraph (f)(2)