

KANSAS STATE DEPARTMENT OF EDUCATION
SPECIAL EDUCATION AND TITLE SERVICES
REPORT OF COMPLAINT
FILED AGAINST
UNIFIED SCHOOL DISTRICT #373, NEWTON PUBLIC SCHOOLS
ON MARCH 20, 2024
DATE OF REPORT APRIL 26, 2024

This report is in response to a complaint filed with the Kansas State Department of Education against USD #373 Newton Public Schools on behalf of ----- by his mother, ----- and stepfather, ----- . In the remainder of the report, ----- will be referred to as “the student.” ----- is the student’s stepfather. In the remainder of the report ----- will be referred to as “the complainant” or as “the stepfather.” ----- will be referred to as “the parent” or “the mother,” and together ----- and ----- ----- will be referred to as “the parents.”

The complaint is against USD #373, Newton Public Schools and is the responsible party of this complaint. In the remainder of the report, USD #373 will be referred to as “the district”. Special education services for Newton Public Schools are provided by Harvey County Special Education cooperative. In the remainder of the report this special education coop will be referred to as “the coop.”

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 March 20th and the 30-day timeline ends on April 19th, 2024. The complaint investigators requested and received an extension, so the revised timeline is April 26, 2024.

Evidence Reviewed

During the investigation, the Complaint Investigators Nikki Crawford and Donna Wickham reviewed all evidence and documentation, which was provided by both the district and the parents. Additionally, the complaint investigators contacted the district and family by phone and email several times to clarify evidence. The stepfather was interviewed on March 25th, 2024 and the mother was interviewed on April 15th, 2024. Tenae Alfaro, building principal, Deanna Folkers, IEP Case Manager and Reagan Seidl, Director of the coop were interviewed on April 12, 2024. The principal and coop director were interviewed again on April 17, 2024. The following documentation and information were used in consideration of the issues:

1. Student’s Progress Report for 2022-2023 school year dated April 4, 2023.
2. Data card April 5, 2023.
3. District Emergency Safety Interventions policy and procedures for complaints, revised July 24, 2023.

4. Documentation of staff training topics and training outline related to student's IEP and behavior intervention plan for the 2023-2024 school year, dated August 15, 2023.
5. Student behavior summary graphs for Non Disruption, Non Defiance and Non Aggression from August 17, 2023 to March 20, 2024.
6. Student behavior reports from August 18, 2023-March 25th, 2024.
7. Email exchange among special education teacher, aide, speech and language therapist, social worker, school psychologist, principal and teacher dated between September 15, 2023 at 10:14 a.m. and September 17, 2024 at 9:09 a.m.
8. Notice of Meeting, dated September 17, 2023, signed waive of notice by parent on September 18, 2023.
9. Functional Behavioral Assessment dated September 20, 2023.
10. Individualized Education Program, dated September 28, 2023.
11. Prior Written Notice, Identification, Special Education and Related Services, Educational Placement, Change in Services, Change in Placement, and Request for Consent, dated September 28, 2023, parent signed consent September 28, 2023
12. Staffing notes dated January 22, 2024.
13. Email exchange between case manager and mother dated February 13, 2024 between 3:29 p.m. and 3:49 p.m.
14. Email from case manager to teacher, principal, and social worker, dated February 14, 2024 at 9:09 a.m.
15. Email from social worker to case manager dated February 14, 2024 at 12:44 p.m.
16. Data Cards from January 17-31, 2024 and February 1-21, 2024.
17. Behavior star data sheets February 22, 2024 and February 23, 2024.
18. ABC Recording Form dated February 26, 2024.
19. Email between the school psychologist and mother, dated March 4, 2024 at 1:22 p.m. and 1:41 p.m.
20. Email exchange between school personnel, dated March 18, 2024 at 1:12 p.m. and 3:56 p.m. and March 19th at 8:56 a.m.
21. Student schedule with staff names dated March 18, 2024.
22. Voicemail recording from principal left for mother, 50 seconds dated March 19, 2024.
23. Seclusion details/Incident Report, dated March 18, 2024.
24. Email exchange between stepfather and principal dated March 20, 2024 between 5:18 p.m. and 6:14 p.m.
25. Email from principal to stepfather, dated March 20, 2024 at 11:15 p.m.
26. Email from principal to mother dated March 21, 2024 at 3:11 p.m.
27. Interview with coop director dated March 25, 2024.
28. Interview with stepfather dated March 25, 2024.
29. Progress Report for 2023-2024 school year, Quarters 1, 2, and 3, dated April 4, 2024.

30. Email exchange between stepfather and superintendent dated April 4, 2024 between 12:52 p.m. and 6:07 p.m.
31. District's Response to Allegations, dated April 5, 2024.
32. Email exchange between stepfather and superintendent dated April 8, 2024 between 2:47 p.m. and 3:21 p.m.
33. Email between complaint investigator and coop director dated April 12, 2024 between 8:37 a.m. and 9:04 a.m.
34. Interview with mother on April 15, 2024.
35. Email from principal to complaint investigator dated April 15, 2024 at 5:53 p.m.
36. Email between complaint investigator and principal dated April 16, 2024 between 2:56 p.m. and 6:18 p.m.
37. Clarification call with principal and coop director on April 17, 2024.
38. Spreadsheet of school staff trained in Crisis Prevention Institute (CPI), undated.

Background Information

The student is an eight year old second grader at a district elementary school where he is eligible for special education and related services under the category of developmental disability. He has medical and psychological diagnosis for Autism Spectrum Disorder Level 2, Attention Deficit Hyperactivity Disorder (ADHD), and Disruptive Mood Dysregulation Disorder (DMDD).

A TASN Autism & Tertiary Behavior Support Consultant is regularly accessed to support the student beyond the services provided by the district and coop. The TASN consultant has supported the student since kindergarten including observations and input on modifications and accommodations included in the September 28, 2023 IEP to address the student's behavior. A consultant from Greenbush also provided support in the past, but not this current IEP year.

According to the student's most recent IEP dated September 28, 2023 he shows a need for specially designed instruction in the areas of social emotional skills, reading, communication, transportation, and paraprofessional support. He also receives accommodations and modifications for the noted areas of need.

He receives 30 minutes of special education service in a resource room five days every week to work on reading, 20 minutes five days a week for social skills, 15 minutes twice a week for speech/language instruction, and 20 minutes one day per week with the social worker to focus on social emotional skills. He utilizes special education transportation every day and 355 minutes of paraprofessional support five days a week in the regular education classroom.

According to an email from the coop director, the student is eligible for his three year evaluation on May 19, 2024. The school psychologist reported to the coop director that the student's mother did not want to complete a reevaluation until the student's tenth birthday.

The school stated the family moved into the district and began the 2018 school year in the district. The student received Part C services until October 2018 when he transitioned to Part B services.

Issues Investigated

1. **ISSUE ONE:** The USD #373, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to follow the student's IEP by failing to offer emergency snacks on March 18, 2024 and using a location for seclusion events or incidents (SAD, office, staff) as behavior intervention during the 2023-2024 school year.
2. **ISSUE TWO:** The USD #373, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide the student's parents with detailed documentation of the student's behavioral incidents during the 2023-2024 school year.
3. **ISSUE THREE:** The USD #373, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to train staff on appropriate handling of behavioral and/or seclusion events during the 2023-2024 school year.

Issue One

The USD #373, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to follow the student's IEP by failing to offer emergency snacks on March 18, 2024 and using a location for seclusion events or incidents (SAD, office, staff) as behavior intervention during the 2023-2024 school year.

Applicable Law

Federal regulations at 34 C.F.R. §300.323(c)(2) require school districts to ensure that as soon as possible following the development of the IEP, special education and related services are made available to the child in accordance with the child's IEP. K.A.R. §91-40-16(b)(2) further specifies those services for which written consent has been granted as specified by law are implemented not later than 10 school days after parental consent is granted unless reasonable justification for a delay can be shown.

Analysis: Findings of Fact

This issue has two components that will be investigated separately, 1) the use of emergency snacks in the event of problem behavior; and 2) using seclusion events as behavior intervention.

The parents described the March 18, 2024 situation in which they were called by phone with: an urgent need to calm [student], who had been isolated from his peers and placed in a room alone, a situation confirmed by his audible distress hear in the background of the call. Upon [mother's] arrival at the school at around 9:55 AM, she encountered a concerning scene,

[student] had been moved to an alternate location from his initial placement, and upon tracking his location, [mother] discovered [student] being held in a windowless cement room, overseen by [teacher], [para], and [para]. The justification for his confinement was never provided by Staff members and [mother] had no information in reference to any events leading up to this moment. The teachers (sic) were asking [mother] to help figure out what was wrong, but were unable to provide ANY information as to what lead to this point (sic). It was swiftly ascertained by ----- that -----'s distress stemmed from hunger, a condition explicitly accommodated within his IEP through the provision of emergency snacks. This necessary intervention was neglected by the staff, exacerbating the situation unnecessarily. Upon [mother's] intervention, a snack was finally retrieved and provided to [student], leading to an immediate de-escalation of his distress.

Additionally, the parents alleged that the student is regularly placed in seclusion for disruptive behavior in addition to the event on March 18, 2024. They state that the district reacts to his behavior rather than addressing his behaviors proactively.

The district responded that snacks are not mentioned in the student's behavior intervention plan (BIP) or IEP and that they follow the BIP as it is written. They further responded that the seclusion is not a regular part of the student's plan and would only use seclusion in a situation that is consistent with state guidelines for emergency seclusion, but not as a part of his special education program.

Use of emergency snacks.

The stepfather stated in an interview on March 25, 2024 that offering the student food is a good strategy to help the student eliminate hunger as a trigger and to move on quickly to identify the root problem for his behavior. The stepfather stated he has communicated this as an effective strategy to the school staff.

The mother stated in her interview on April 15, 2024 that providing emergency snacks is important as a behavioral intervention, but also one of his medications has a side effect of increasing appetite. She stated that she has provided snacks for her son to the school. Finally, she stated that she has shared this information with the district since the student was in kindergarten.

During the district interview on April 12, 2024 the special education teacher reported that the student can ask for snacks at any time which are provided by the school and the parents, but snacks are not a formal part of his behavioral intervention plan.

The September 28, 2023 student's IEP nor BIP include snacks as an accommodation or intervention.

Use of seclusion.

The September 28, 2023 IEP and BIP, which includes a Crisis Management Plan do not mention use of seclusion.

The Crisis Management Plan states, "In the event that [student] is unable to gain control of his behavior and/or work appropriately in the office within a reasonable amount of time, parents may be consulted and may be used as an intervention. If behaviors cannot be managed by his Behavior Intervention Plan and he becomes a danger to himself or others, school administration will be notified and administration will make decisions regarding how to proceed. Building and district disciplinary rules may be applied and the IEP team will be notified of any action of suspension/ expulsion and will review the Behavior Intervention Plan to determine whether modifications and/or changes are needed."

The mother clarified the role of the parents to consult during the April 15, 2024 interview by stating that when the student is upset or dysregulated the district may call the mother for the student to talk with to learn why he is upset. She explained that sometimes he will tell her and work through the problem with her when he is too upset to talk with school staff.

The BIP, dated September 28, 2023 includes the use of a sensory room as a choice during breaks. An intervention in the BIP states, "2. If unsafe behavior continues, [student] will be sent to the office." The BIP does not describe whether "office" is the room located near the cafeteria where the student may go in the morning when the cafeteria is too overstimulating and is also referred to as the "get ready" room or the school office where the principal and administrative staff are located.

The mother reported in the April 15, 2024 interview that she is unclear about the protocol of where the student goes when staff determine he is not able to stay in the general education classroom due to behavioral issues.

An email exchange between the parents and principal on March 20, 2024 stated that "it was my understanding that seclusion (where a child is in a room by his/herself either with the door closed and held by an adult or by being restricted from exiting the open door) was not needed on Monday because he was able to keep himself and staff safe."

An email exchange between the superintendent and parents dated April 8, 2024 discussed seclusion events addressed by Kansas state regulations that are not addressed by IDEA and not investigated as part of this complaint.

The district explained during an interview on April 12, 2024 that when the student's behavior escalated on March 18, 2024, he was not able to calm with his usual strategies. He was taken to the safe room to calm but due to some safety concerns with the student pulling on a light switch box, the decision was made for him to move to the room off of the cafeteria that he often goes in the morning as an alternate to the cafeteria. This room was chosen because an alternate room where he would go was occupied with another student and the staff wanted to provide him an area where he would not be seen or heard by other students. The district stated that food had previously been offered to the student, but he had declined. When

passing through the cafeteria to the room he smelled the food from breakfast and lunch preparations and stated he was hungry.

The district stated during an interview on April 16, 2024 that when the student exhibits noncompliance he goes to an area (family room) outside of the classroom, the quiet room (also used for typical peers near the office/library) that is noted in his September 28, 2023 BIP, the get ready room (one located beside the cafeteria) or the safe room.

The district stated during the April 12, 2024 interview that while the school discussed the get-ready room with the family sometime during kindergarten they may not have continued to talk about its purpose and availability for the student as an option to the cafeteria in the morning until taken to morning classes.

Conclusion

Based on document review it is not found that the IEP nor BIP included a provision to offer emergency snacks to the student. It is noted that the family has reported that emergency snacks is an effective intervention for the student to rule out that as the basis for behavior so the IEP team may want to consider this for the student. Based on the foregoing however, it is not substantiated that the district failed to follow the student's IEP by failing to offer emergency snacks on March 18, 2024.

Based on interviews with the stepfather on March 25, 2024, the mother on April 15, 2024 and the principal and coop director on April 17, 2024, it is clear there is not a shared understanding between the family and school of how seclusion is defined. The district stated in an interview on April 17, 2024 that they are meeting with the family to get that shared understanding. It is found that the student is provided many alternate rooms to deescalate, gain sensory regulation and as a choice. Based on the foregoing *it is not substantiated* that the district is using a location for seclusion events or incidents (SAD, office, staff) as behavior intervention during the 2023-2024 school year. It is recommended that the family and school discuss seclusion and clarify the role of using separate settings in the IEP, behavior intervention plan and crisis management section of the IEP.

Issue Two

The USD #373, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide the student's parents with detailed documentation of the student's behavioral incidents during the 2023-2024 school year.

Applicable Law

Two regulations are appropriate to investigate this issue relative to IDEA.

First, state regulations at K.A.R. §91-40-25 (a)(1)(2) states each agency shall allow the parents of an exceptional child an opportunity to inspect and review all education records and participate in any meeting concerning their child with respect to the following: (1) The identification, evaluation, or education placement of the child; and (2) the provision of FAPE to the child.

Second, federal regulations at 34 C.F.R. §300.320(a)(3) and Kansas statutes at K.S.A. §72-3429(c)(3) state that the individualized education program must include a statement of when periodic reports on the progress the child is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards) will be provided.

Analysis: Findings of Fact

The parent alleged that they made requests for documentation of the March 18, 2024 behavior incident and previous seclusions. They stated that the principal denied the March 18, 2024 incident was seclusion, directly contradicting the experiences and observations made by the mother during the incident. They additionally state they are unsure how the student's behavior intervention plan and behavioral goals are improving the student's behavior – that the behavior check sheets were too much information and the star data sheets do not provide enough information to be consistent with the student at home.

The district reports that daily documentation of the student's behaviors is shared with the parents and that it appears the parents review the data and work with the student to improve his behavior at school. The principal offered that when the student receives an office referral there is documentation sent home with the daily behavior data sheet and that she also often communicates by phone and text when the student has had a particularly difficult day or when teachers notice a new behavior. A quarterly progress report is mailed to the parents and includes his social/emotional goals with a summary of current data.

The findings of Issue one are incorporated herein by reference.

The IEP dated September 28, 2023 documents that the IEP goals will be monitored and reported quarterly. The student's progress reports show that the goal progress is reported quarterly consistent with the district's quarters.

The mother reported in the April 17, 2023 interview that while she receives the quarterly progress reports she does not receive quarterly behavior data summaries that would help her understand the student's behavior patterns, nor often adequate information when the student has had behavioral outbursts at school. She requested a change in the format of daily data cards earlier this year but was not involved in the revision nor knew when they were to be implemented. She states the new data cards, star sheets, do not offer helpful information such as the behavior triggers or where the behaviors occurred.

In a phone call with the principal and coop director on April 17, 2024 the principal offered to reach out to the mother to get clarity on what additional information she would like included on the current daily data sheet. The principal also clarified that quarterly progress reports are mailed to the parents, and she will ensure that bar charts of the three identified social emotional behaviors will also be included in the future.

An email shows that the parents requested a detailing of the March 18, 2024 behavior incident, and that the principal and coop direct both responded addressing the incident. An email sent by the principal on March 21, 2024 showed that a description of the event of March 18, 2024 was sent to the parent.

Conclusion

Based on the foregoing, *it is not substantiated* that the district failed to provide the student's parents with detailed documentation of the student's behavioral incidents during the 2023-2024 school year.

Issue Three

The USD #373, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to train staff on appropriate handling of behavioral and/or seclusion events during the 2023-2024 school year.

Applicable Law

Federal regulations at 34 C.F.R. §300.119(b) state that each SEA shall carry out activities to ensure that teachers and administrators in all public agencies are provided with technical assistance and training necessary to assist them in this effort.

Further, federal regulations at 34 C.F.R. §300.320(a)(4) and Kansas statutes at K.S.A. §72-3429 state that an individualized education program must include supports for school personnel that will be provided for the child.

Analysis: Findings of Fact

The parents alleged that the staff working with their student were not adequately prepared to respond to behavioral concerns of their child without jeopardizing his safety and resorting to overly restrictive practices, specifically seclusion. The mother expressed concern in the April

15, 2024 interview that teachers are not trained enough to support the student which results in reactive interventions rather than proactive support. She asserts that staff are not specifically trained in support of students with autism, ADHD, or oppositional defiant behaviors.

The district responded that all staff at the school have completed annual Emergency Seclusion Intervention training at the beginning of the school year and staff hired throughout the school year complete this training as well to understand when seclusion and restraint is used as an emergency procedure. Additionally, nine staff at the school are Crisis Prevention Intervention (CPI) trained. Finally, the student behavior intervention plan includes a number of steps in recognizing problem behavior, and how to address the behavior to ensure safety and student dignity. The district notes that they are working separately with the family about concerns related to the general education emergency safety interventions (ESI) requirements that do not fall under IDEA and are not a part of this investigation.

The findings of Issues one and two are incorporated herein by reference.

The September 28, 2023 IEP included, "Meeting with TASN and Autism teams as needed, and weekly meetings with the team to discuss [student's] progress, modifications, and accommodations in the Supports for School Personnel Section. The IEP did not address seclusion or ESI.

The September 28, 2023 IEP Supports for School Personnel section includes "Meeting with TASN and Autism teams as needed and weekly meetings with the team to discuss [student's] progress, modifications, and accommodations".

The district reported in their April 5, 2024 response that the team meets regularly with the TASN Autism Specialist to discuss tricks and techniques that support the student weekly or bi-weekly as the student's behavior warrants. Any new strategies generated at these meetings are shared with the staff who work with the student.

The district reported during the interview on April 12, 2024 and provided documentation of training received by paraprofessionals for the 2023-2024 school year which included reviews of IEPs, behavior plans, behavior charts, CPI, and conscious discipline on August 15, 2023. Staff also received training about the behaviors of students with autism on September 19, 2023; conscious discipline on September 28, 2023; and behavior support review on November 30, 2023. The special education teacher reported that she meets with the paraprofessionals regularly to discuss related concerns.

Documentation provided by the district showed the staff in the school who are current with CPI training. The district reported in an April 15, 2024 email that they replaced a non-CPI trained paraprofessional who had been working with the student due to the stepfather's request that staff who support the student "are properly trained in line with state standards and his specific educational and emotional needs" which the district interpreted as CPI training.

Conclusion

This investigation only addressed staff training regarding the student's IEP and BIP and did not investigate the family's primary concern related to the event on March 18, 2024. As seclusion, nor ESI were included as part of the student's IEP or BIP it is outside the scope of the complaint investigators to investigate. It is found that the IEP did include personnel training and documentation showed it was conducted. Based on these findings, *it is not substantiated* that USD #373 failed to train staff on appropriate handling of behavioral and/or seclusion events during the 2023-2024 school year.

Summary of Conclusions/Corrective Action

1. **ISSUE ONE:** A violation of 34 C.F.R. §300.323(c)(2) and K.A.R. §91-40-16(b)(2) was not found, based on review of documentation and interviews. Corrective action is not required.
2. **ISSUE TWO:** A violation of K.A.R. §91-40-25(a)(1)(2) and K.A.R. §91-42-2 was not found, based on review of documentation and interview. Corrective action is not required.
3. **ISSUE THREE:** A violation of state and federal regulations at 34 C.F.R. §300.119(b), 34 C.F.R. §300.320(a)(4) and K.S.A. §72-3429 was not found based on review of documentation and interview. Corrective action is not required.

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)