

KANSAS STATE DEPARTMENT OF EDUCATION
SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT
FILED AGAINST
UNIFIED SCHOOL DISTRICT #475
ON SEPTEMBER 1, 2023

DATE OF REPORT OCTOBER 8, 2023

This report is in response to a Department of Labor complaint filed with the Kansas Department of Labor Industrial Safety and Health Division which was forwarded to the Kansas State Department of Education about a Behavior Support Classroom (BSC) at Spring Vallely Elementary in USD #475. In the remainder of the report, each student in the classroom will be provided an alphabetical assignment and referred to as "student A, student B, etc." -----, a former employee in the classroom and district is the complainant and will be referred to as "the complainant."

The complaint is against USD #475. In the remainder of the report, USD #475 will be referred to as "the district", "the local education agency (LEA)", or "the school".

The Kansas State Department of Education (KSDE) allows for a 30-day timeline to investigate a complaint from the date in which it was filed. A complaint is considered filed on the date in which it was received by KSDE. In this case, the KSDE initially received the complaint from the Kansas Department of Labor Industrial Safety and Health Division on September 1, 2023 and the 30-day timeline ends on October 1, 2023. The Complaint Investigator later requested and was granted a one-week extension with the timeline ending October 8, 2023.

Evidence Reviewed

During the investigation, the Complaint Investigator, Dr. Donna Wickham reviewed documentation provided by the district and interviewed district staff. Six attempts were made to clarify issues and gather information from the complainant via email, phone, and text, however the complainant did not respond. The Complaint Investigator additionally emailed all the parents in the classroom informing the parents of a complaint. The following documentation and information were used in consideration of the issue(s):

1. Individualized Education Plan Student A
2. Individualized Education Plan Student B
3. Individualized Education Plan Student C
4. Individualized Education Plan Student D
5. Individualized Education Plan Student E
6. The Wildcat Way Information Guide 2023-24, Revised August 1, 2023
7. USD 475 Paraeducators Presentation dated August 6, 2023

8. Email from Principal to complainant dated August 9, 2023 at 10:34 PM.
9. Email exchange between Complainant and Sierra Jackson, Principal, Spring Valley Elementary dated August 14, 2023 between 4:26 PM and 6:53 PM.
10. Badge Reader Adjustment Slip for Complainant dated August 17, 2023
11. U.S. Department Labor Complaint/Apparent Violation Form dated August 18, 2023.
12. District Response dated September 13, 2023
13. 2023-2024 Geary County USD 475 Classified Employee Handbook Effective: 01 July 2022
14. Memo from Tim Winter, Executive Director of Personnel Services to Building Principals/Supervisors dated June 2023 regarding Classified Employees Work Schedule for 2023-2024 School Year
15. Classified New Employee in Processing Dates for the 2023-2024 School Year
16. Paraeducators assigned to Spring Valley Elementary document, undated.
17. Spring Valley Teacher Handbook, excerpted, for Complaint Issues
18. Structured Teaching Daily Schedule (Teacher, Paraeducator, Students)
19. Spring Valley Bus/Van Procedures
20. Spring Valley Elementary Staff Information 2023-2024
21. Sample Student Visual Schedule

Background Information

This complaint was made by a former employee who was employed for 4 full days and two half days this school year. Because the complainant did not make herself available to clarify the issues the complaint investigator determined to focus the investigation on the classroom and students to which the former employee had been assigned. Further, the complaint was generally focused on school routines and general student treatment. As such, the complaint investigator made the following decisions to conduct and investigate the IDEA allegations.

1. Interview school staff and examine documents about district, school, and classroom practices to determine if they were consistent related to student arrivals, breakfast, breaks, and reading instruction in the classroom.
2. Examine documents about staff training and staff assignments to determine if the practices were consistent.
3. Examine student IEPs to determine if the schedules and practices were consistent.
4. Contact parents of students in the classroom to inquire if they had any information to provide about the investigation.

The classroom included five first and second grade students enrolled in a multi-age classroom for behavior. It was staffed by a teacher who has been in her current position for four years but a teacher for seven years. Two paraeducators were assigned to this classroom, however additional staff coverage was available during bus departure and supervision in the hallways

during transitions. The teacher reported that she models her classroom on the principles and practices of Project TEACCH™ from University of North Carolina. She stated she was trained in the principles of Applied Behavior Analysis and is completing training as a Board Certified Behavior Analyst.

Issues Investigated

1. **ISSUE ONE**: USD #475, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to implement the special education and related services for students who were assigned to classrooms where the complainant worked during the 2023-2024 school year, specifically students were denied breakfast or breaks until compliance or daily tasks were completed, students faced the wall a good portion of the school day with no instruction, students were engaged in silent reading without accessible reading materials, and students were not supervised when disembarking the bus in the morning to classrooms.
2. **ISSUE TWO**: USD #475, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to adequately train paraeducators regarding their duties and did not provide relevant health information regarding the students assigned to classrooms where the complainant worked during the 2023-2024 school year.
3. **ISSUE THREE**: USD #475, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), allowed paraeducators to provide direct instruction to students without teacher supervision during the 2023-24 school year.

Issue One

USD #475, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to implement the special education and related services for students who were assigned to classrooms where the complainant worked during the 2023-2024 school year, specifically students were denied breakfast or breaks until compliance or daily tasks were completed, students faced the wall a good portion of the school day with no instruction, students were engaged in silent reading without accessible reading materials, and students were not supervised when disembarking the bus in the morning to classrooms.

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.

Kansas State regulations at K.A.R. 91-40-16(b)(2) requires 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

Breakfast delayed or denied until compliance or tasks completed. The classroom teacher stated that students may eat breakfast at school prior to instruction. The Spring Valley Information Guide dated 2023-2024 describes the Breakfast Program as follows:

Breakfast is served daily. Students eating breakfast should use the main entrance, door #19, near the flagpole, not through their grade level entrance. As outlined in the Geary County Elementary Schools Family Handbook, "children will eat the school breakfast if they come through the line. They cannot bring an outside breakfast to eat." The breakfast program is scheduled from 7:45 to 8:00. If your child is late to breakfast they will not be able to eat at that time. Spring Valley offers a Second Chance Breakfast for students who did not arrive on time for breakfast at school. They will have the opportunity to purchase a breakfast on a schedule 8:45- 9:15 and take it to their class. Please notify the office if you would not like your child to participate in Second Chance Breakfast.

Interview with the teacher found that her students participated in this program although they ate in the classroom rather than the lunchroom to avoid the overstimulating cafeteria. She reported that the routine was that once students got off the bus or were dropped off by parents, they were escorted to their classroom to drop their belongings. The students then were escorted to the cafeteria in a group of 2 or individually depending on their para assignment to pick up their breakfast tray and return to their classroom for breakfast. Students were assigned in groups of 1 – 2 to a para or teacher for the day and the staff person was the person responsible for accompanying the student to and from the lunchroom and then supervised the students while eating. Students ate at a large table in the classroom and once they finished, they began their morning schedule. The student visual schedules showed breakfast was the first activity of the day. The teacher reported that breakfast was not delayed in the morning because the lunch trays needed to be returned to the cafeteria and the large table needed to be cleared so the daily schedule could start.

Breaks delayed or denied until compliance or tasks completed. The teacher reported that students were individually assigned breaks throughout the school day based on the student's individual needs and IEPs. She reported that she met on Tuesdays to review individual student programs to ensure all staff were working with the students in a consistent manner and implementing the IEPs. In reviewing the individual student IEPs, it was found that Student A had an accommodation for multiple or frequent breaks and a goal to learn to request a break. Student B had a Behavior Intervention Plan listing non contingent breaks for direct attention.

Student C had scheduled breaks or choice times for 5-10 minutes as an accommodation and in the Behavior Intervention Plan. Student D had a Behavior Intervention Plan that lists that the student should request a break and had scheduled movement breaks. Student E had movement breaks as an accommodation. The classroom teacher denied that student breaks were contingent on compliance or completing tasks.

Students faced walls for extended periods of time. The teacher reported that some student's workstation may be placed face toward the wall if they needed to be oriented away from distractions, but students have individual or small group instruction provided throughout the day or brain breaks according to individual student schedules. She reported that students' work activities were no longer than 15 minutes, but students seldom worked that long before taking a brain or movement break. The staff person assigned to the student made that decision based on observation and guidance from the teacher.

Students engaged in silent reading without accessible reading materials. The teacher stated that all students were engaged in reading activities based on their grade level. Students were in groups of two or individual based on para and teacher assignments. Student visual schedules showed short periods of instruction. Four students in the classroom had an individual IEP goals for reading and only one student had an accommodation for augmenting prereading activities with manipulatives as below:

	Student A	Student B	Student C	Student D	Student E
Reading Goal	Using manipulatives or visual cues student will state the primary sound of a consonant or vowel	None testing found student reading exceeded grade level	Share knowledge of 2 nd grade reading passage or higher using variety of strategies (orally, drawing, diorama, retell, etc.)	Understanding of spoken words, syllables, and phonemes, produce single-syllable words by blending sounds, isolate and pronounce initial, medial vowel and final sounds and increase phonemic awareness by blending single phonemes of words with up to 5 phonemes	Prereading goals
Accessible Reading accommodation	None	None	None	None	Hand on activities with manipulatives

Bus Supervision when disembarking the bus in the morning to classrooms. Spring Valley Bus/Van Procedures for 2023-2024 documented that students riding the general education buses (Students B, C, and E) would be met at the bus by staff. Students would enter through the gym entrance door (#13) and sit in the gym on their assigned spots until all students entered the building. Breakfast students would walk up the gym ramp and non-breakfast students would walk up the hall ramp to class at 7:45. Students riding special transportation buses (Students A and D) would be met at the bus and walked to the Behavior Support Classroom. No students had Supplementary Aids and Services and Other Supports for School Personnel in their IEPs. Finally, the Classroom teacher described that each morning the paras were assigned to meet specific students. If the student was dropped off the paras went to the parent drop off lane to meet the students. She stated the students were supervised from the time they got off the bus until they walk to the room first thing in the morning to drop off personal belongings.

Conclusion

Three parents (or their representative) responded to the Complaint Investigator notifying the parents of the complaint, but stated they did not have information to contribute to the issue. Based on the foregoing, it is *not substantiated* that USD #475 failed to implement the special education and related services for students who were assigned to classrooms where the complainant worked during the 2023-2024 school year.

Issue Two

USD #475, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to adequately train paraeducators regarding their duties and did not provide relevant health information regarding the students assigned to classrooms where the complainant worked during the 2023-2024 school year.

Applicable Law

Federal regulations at 34 C.F.R. 300.119 Technical assistance and training activities, states that each SEA must carry out activities to ensure that teachers and administrators in all public agencies.

- (a) Are fully informed about their responsibilities for implementing 34 C.F.R. 300.114; and
- (b) Are provided with technical assistance and training necessary to assist them in this effort.

Analysis: Findings of Fact

Documents showed that all paraeducators were provided training prior to students attending school. Documentation showed that the complainant attended training with the exception of

leaving August 17, 2023 at 2:30 PM. The PowerPoint used during the paraeducator training showed topics included:

- Know and understand your role as a paraeducator.
- Become more knowledgeable in the area of special education.
- State Required Information
- Special Education Basics
- De-escalation

Emails between the complainant and the school principal showed that the complainant's understanding of work hours and training with classroom teacher differed from what she was told on hiring.

Document review showed two students had health care plans. The health care plan for Student E listed a peanut and peanut butter allergy. A nurse is on staff and has an office at the school and was aware of the allergy. The teacher reported that each student had a file in a file drawer in the classroom with a divider to contain the Health Plan. During training the teacher pointed out where the student information was stored and how to locate student files.

The teacher reported that it was posted outside her classroom that her classroom was peanut free. The teacher reported that the principal sent a note to parents prior to the school year about peanut allergies and areas of the school designated peanut free.

The Spring Valley Information guide for parents stated, "No food or candy will be accepted from parents, this also includes student birthdays. However, non-food favors/trinkets are allowed. Teachers should not bring home-baked goods and should follow allergy guidelines."

The classroom teacher described the incident about hives in the complaint as the student had a raised bump that the student was scratching. The student was sent to the nurse who treated it according to district guidelines with a topical cream.

Conclusion

Three parents (or their representative) responded to the Complaint Investigator notifying the parents of the complaint, but stated they did not have information to contribute to the issue. Based on the foregoing, it is *not substantiated* that USD #475 failed to adequately train paraeducators regarding their duties and did not provide relevant health information regarding the students assigned to classrooms where the complaint worked during the 2023-2024 school year.

Issue Three

USD #475, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), allowed paraeducators to provide direct instruction to students without teacher supervision during the 2023-24 school year.

Applicable Law

Federal regulations at 34 C.F.R. 300.156(b)(1), Personnel Qualifications, related services personnel and paraprofessionals states, The qualifications under paragraph (a) of this section must include qualifications for related services personnel and paraprofessionals that—

(1) Are consistent with any State-approved or State-recognized certification, licensing, registration, or other comparable requirements that apply to the professional discipline in which those personnel are providing special education or related services.

The Special Education Reimbursement Guide State Categorical Aid for School Year 2023-24 outlines Paraeducator Duties as: Paraeducators provide instructional or related services under the supervision of licensed or certified special education professionals in an accredited or approved special education program. Examples of allowable activities include:

- instructional support under the supervision of a professional;
- participation in IEP meetings;
- parent-teacher conferences;
- staff development; and
- student data collection and record-keeping, such as maintaining observational and anecdotal records;
- assisting the special teacher with paperwork related to support provided to students with exceptionalities for whom the para is responsible;
- supporting students with exceptionalities in a general education program if the paraeducator is supervised by a special teacher.

Analysis: Findings of Fact

The PowerPoint, titled, Paraeducator Training 2023-2024 school year presented to the complainant prior to the start of the school year showed:

Paraprofessionals are school employees who can increase learning opportunities by:

- giving students opportunities to practice skills;
- providing students with more individualized instruction;
- Supporting Behavior Intervention Plans (BIP)
- All of this is done under the supervision of a licensed/certified professional.
- Another slide stated:

- Paraeducators provide instructional or related services under the supervision of licensed or certified special education professionals in an accredited or approved special education program.
- Paraeducators provide specially designed instruction (change in content, methodology, delivery of instruction) under the supervision of the case manager/special education teacher or service provider.

The classroom teacher stated she met with the staff on Tuesdays to go over student instruction and in the classroom reviewed her role and the para roles. The attendance sheets showed the complainant attended the trainings before working with students and one Tuesday (August 15m 2023) prior to resigning.

Attendance from the principal showed the complainant was with students in the afternoon of August 10, worked full days on August 11, 14, 15, 16 and the morning of August 17, 2023.

Conclusion

All parents (or their representative) responded to the Complaint Investigator notifying the parents of the complaint, but stated they did not have information to contribute to the issue. Three parents (or their representative) responded to the Complaint Investigator notifying the parents of the complaint, but stated they did not have information to contribute to the issue. Based on the foregoing, it is *not substantiated* that USD #475 allowed paraeducators to provide direct instruction to students without teacher supervision during the 2023-24 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 interview with district. Corrective action is not required.
2. **ISSUE TWO:** A violation of 34 C.F.R. 300.119 was not found, based on review of documentation and interview with district. Corrective action is not required.
3. **ISSUE THREE:** A violation of 34 C.F.R. 300.156(b)(1) and requirements outlined in the Kansas "Special Education Reimbursement Guide State Categorical Aid," were not found, based on review of documentation and interview with district. 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)