

KANSAS STATE DEPARTMENT OF EDUCATION
SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT
FILED AGAINST
UNIFIED SCHOOL DISTRICT #500
ON OCTOBER 11, 2023

DATE OF REPORT NOVEMBER 30, 2023

This report is in response to a complaint filed with the Kansas State Department of Education on behalf of -----, by her mother, ----- . In the remainder of the report, ----- will be referred to as "the student." ----- will be referred to as "the complainant" or "the parent".

The complaint is against USD #500. In the remainder of the report, USD #500 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 on October 11, 2023, and the 30-day timeline ended on November 10, 2023. An extension was granted until November 30, 2023.

Evidence Reviewed

During the investigation, the Complaint Investigator, Doug Tressler reviewed all evidence and documentation, which was provided by both the district and the complainant(s). The following documentation and information were used in consideration of the issue(s):

1. The student's attendance records for 2022-2023 school year and 2023-2024 school year.
2. The student's discipline records for 2022-2023 school year and 2023-2024 school year.
3. Prior Written Notice, dated 9/27/2023, refusing to conduct an initial evaluation.
4. The timeline of the student's evaluation and request for evaluation history, starting 2019-2020 through 2023-2024 school years.
5. Comprehensive Evaluation Report, dated 12/13/2021.
6. Manifestation Determination Review completed 5/22/2023.
7. The student's current 504 Plan, dated 1/06/2023.
8. Letter to parent, dated 1/26/2023, stating that student refuses to use accommodations in the 504 Plan.
9. Interviews with district.
10. Interviews with the parent.
11. Discipline records provided by parent.

Background Information

The student is a second-grade student, in attendance at USD #500. The student has been determined eligible for Section 504/ADA through the Section 504 identification process. Additionally, the student has been diagnosed, through an outside agency, with Attention-Deficient Hyperactivity Disorder (ADHD), Intermittent Explosive Disorder (IED), and Autism Spectrum Disorder (ASD).

Issues Investigated

1. **ISSUE ONE**: The USD #500, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to evaluate the child upon request from the parent. [Pg. 2]
2. **ISSUE TWO**: The USD #500, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed follow the student's safety plan, resulting in the student being disciplined. [Pg. 8]

Issue One

The USD #500, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to evaluate the child upon request from the parent.

Applicable Law

Under K.A.R. 91-40-7(c)(3), an LEA may refer a child for an evaluation if the parent of the child requests, and gives written consent, for the evaluation, and the board agrees an evaluation of the child is appropriate. Under state and federal law, once the district receives a request for evaluation from the parent, the district must meet to review existing data, (including input from the parent, current classroom-based, local, or state assessments, classroom observations, and observations by teachers and related services) and determine if any additional data is required. (34 C.F.R. 300.305; K.S.A. 72- 3430(i)).

Additionally, under K.A.R. 91-40-7(a)(3), an LEA is obligated to identify, locate, and evaluate all children with exceptionalities residing in its jurisdiction, including any children "suspected of being children with disabilities even though they are advancing grade to grade."

If, following the review of all existing data, the district determines there is not enough evidence to support conducting an evaluation, the district may refuse to evaluate the student. In that case, the district must send a Prior Written Notice informing the parent that the child will not be evaluated and why that decision was made. (K.S.A. 72-3430(b)(2); 34 C.F.R. 300.304(a)).

Findings of Fact

Parent's Position

The parent claims the student has been wrongfully denied an evaluation for an IEP, in part, due to the student's attendance record. However, the parent notes that many of the student's absences are a result of disciplinary actions taken by the school. The parent further contends the district is "punishing [the student] for her behaviors by placing her in isolation and not giving her the correct support". The parent feels the student "needs support and isn't getting it." Because of this, the parent has requested an IEP evaluation on five separate occasions. Twice the district has completed comprehensive evaluations, and following the last three requests the district has refused to evaluate.

District's Position

The district claims that they have properly reviewed all existing data and appropriately refused to conduct an evaluation. The district reports to have considered, "student attendance records, discipline records, data and progress monitoring from available strategies and interventions being implemented within the multi-tiered system of support (MTSS) process, and current Section 504 Plan." The district further states the student's 504 plan was changed during the 2022-2023 school year and therefore not enough time has lapsed to determine how the interventions put in place will affect the student's behavior.

Investigation

During the investigation, the district provided a timeline of the student's evaluation history and the history of the parent's requests for evaluation. The timeline is as follows:

2019-2020 School Year Early Childhood student

Parent Requested SPED Evaluation

11/18/2019- SPED Conducted Comprehensive Evaluation

Outcome: Student did not qualify for SPED

Results Noted: Medical Diagnosis of ADHD

2020-2021 School Year Early Childhood student- attended virtual school.

2021-2022 School Year Kindergarten student

Parent Requested SPED Evaluation

9/13/2021- SPED Conducted Comprehensive Evaluation

Outcome: Student did not qualify for SPED, recommended 504 Plan

Results Noted: Medical Diagnosis of ADHD

2022-2023 School Year First Grade student

Parent Requested SPED Evaluation

8/26/2022- SPED Issued parent PWN refusal to evaluate due to lack of data and did not have data to suspect a sped disability, it was also noted the student was chronically absent.

4/26/2023- SPED Issued parent PWN refusal to evaluate due to lack of data and did not have data to suspect a sped disability, it was also noted the student was chronically absent.

Outcome: Recommendation Revise 504 plan

2023-2024 School Year Second Grade student

Parent Requested SPED Evaluation

9/27/2023-SPED Issued parent PWN refusal to evaluate due to lack of data and did not have data to suspect a sped disability, it was also noted the student was chronically absent.

Outcome: Recommended 504 comprehensive evaluation and to revise the 504 to include a Behavior Intervention Plan with the support of the Behavior team

Results Noted: Medical Diagnosis of ADHD only.

The timeline shows the parent requested an evaluation on five occasions. The district completed a comprehensive evaluation following two of those requests, once on 11/18/2019 (Preschool year), and then again on 9/13/2021(kindergarten year). Both evaluations resulted in finding the student ineligible. However, following the 9/13/2021 evaluation, the district did recommend the student be placed on a Section 504 Plan.

The parent again requested an evaluation on 8/26/2022, 4/26/2023 (first grade year), and on 9/27/2023 (second grade year). Following each request, the district refused to evaluate because of "lack of data and did not have enough data to suspect a sped disability." It was also noted each time that the student was chronically absent.

Specifically, the PWN mailed to the parent on 9/27/2023, stipulates that the reason an evaluation will not be conducted is,

"The team reviewed the parent's request letter along with [the student's] attendance records, classroom performance, district and state assessment data, current Section 504 Plan, and staff observations. Additionally, both teacher and staff were interviewed to provide insight to [the student's] behavior in the school environment. Furthermore, upon review of school interventions, it was determined that there was a lack of structured, evidence-based interventions done with fidelity or over a long enough period with routine adjustments to render the intervention effective.

The LEA refusal to conduct an initial evaluation at this time due to her chronic absenteeism and lack of evidence-based Tier I, Tier II and Tier III behavioral interventions and it is not most educationally appropriate to conduct an initial special education evaluation at this time."

This latest refusal to evaluate has come two years after the last evaluation. During that timeframe, according to district records, the district has completed a 504 evaluation on 1/6/2022, met to review the 504 Plan on 1/26/2023, and following the filing of this complaint, reviewed the 504 Plan again in November 2023 to include a Behavior Intervention Plan.

A review of the student's attendance record reveals the student was absent a total of 31.5 days during the 2022-2023 school year and 6 days in the 2023-2024 school year (from the start of the year until the 9/27/2023 refusal to evaluate). Cross-referencing these dates with the student's discipline record shows that during the 2022-2023 school year, 7 of the 31.5 absences were due to out-of-school suspensions resulting from the student's behavior. Additionally, a Manifestation Determination Review was completed on 5/22/2023, in which the

district found the incident triggering the MDR was a manifestation of the student's disability (triggering event included aggression toward staff, "(punch, kick, slap, pinch)", resulting in a staff member's wrist being "significantly hurt.") Further, in that MDR, the district states the student had been hospitalized, because of her behaviors, 6 times during the school year. Therefore, of the 31.5 days missed: 7 were due to the student's behavior, her behaviors were determined to be a manifestation of her disability, and an undisclosed number of those days were undoubtedly due to her 6 hospitalizations.

Conducting the same cross-reference for the 2023-2024 school year's relevant timeframe, shows that of the 6 days the student was absent, one was for an out-of-school suspension resulting from the student's behaviors. Additionally, on 9/5/2023, an incident involving the student prompted the school to request the parent come to the school and the school social worker to recommend the student be taken to a crisis center. Following this incident, the student missed the next four days of school due to being in the hospital. Only one day of the six is possibly not linked to the student's behavior.

Additionally, the parent provided over two dozen documents, sent to her by the district, notifying her of seclusions, restraints, or both, which have occurred since the beginning of the 2023-2024 school year. From August 22, 2023, to August 31, 2023, alone the student was restrained or secluded eight times due to her aggressive behaviors.

Despite all this, the district argues that there has been a lack of data to determine whether to evaluate the student for an IEP. They also claim that chronic absenteeism has prevented the district from executing behavior interventions listed in the 504 Plan and Tier interventions with fidelity.

First, while it is important to note the student is chronically absent, it is equally important to consider the district's reaction to the student's behaviors and how that has affected the student's attendance. Next, the district acknowledges that the student's behaviors, such as anger, and aggressiveness are manifestations of the student's disability. Third, the district acknowledges, in discipline reports, that the student's behaviors do disrupt the learning of others (as evidenced by the discipline reports – example, 9/25/2023 incident in which the class had to be "evacuated" and the "room was destroyed" by the student). Finally, while the district does indicate that new interventions were included in the student's 504 Plan last year (1/26/2023), this alone does not lessen the fact that the district had approximately 5 months to utilize those new interventions. Even given the student's absences (which in this case seem to be mostly linked to the student's behaviors), the district had ample time to gather data on the student's progress in relation to the "new interventions". Also, the district has had two years to obtain data since the last comprehensive evaluation done on 9/13/2021. During that time, the student has been suspended 8 times, been placed in isolation, restrained, gone through an MDR, which found her behavior was linked to her disability, and been hospitalized at least 6 times.

Furthermore, as is often noted; all students are general education students first, and therefore, general education interventions (GEI) should be used, and often are used, prior to determining an initial evaluation is appropriate. However, even GEI has its limits. When a district is in a situation where a student is chronically absent, especially when many, if not most, of those absences are due to the student's behaviors, the district has an obligation to consider the absenteeism as a possible effect of the student's disability, and not use it as a factor to refuse to evaluate.

Finally, it is worth noting that a 504 evaluation or the existence of a 504 Plan does not negate a district's requirements under IDEA child find. Even if a student's 504 Plan is being reviewed, that does not remove the district's IDEA child find requirements.

Districts have an obligation to identify, locate and evaluate a student suspected of a disability. In this case the district clearly should have suspected the student was a student with a disability based on the number of suspensions, behaviors, restraints, hospitalizations, disruption to the student's learning and the learning of others (as evidenced by the discipline records), and the MDR which notes that the behavior of the student was linked to her disability.

Conclusion

Therefore, based on the information above, a violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), by failing to evaluate the child upon request from the parent *is substantiated*.

Issue Two

The USD #500, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed follow the student's safety plan, resulting in the student being disciplined.

Applicable Law

Section 504 is a purely federal law, and as such KSDE does not have authority to interpret this purely federal law.

Parent's Position

In her complaint, the parent alleges that the school is not following the student's safety plan. The parent claims that the safety plan requires the district to call the student's caseworker at PACES or her SED supervisor before discipline action can be taken.

District's Position

The district claims that the safety plan is being followed.

Findings of Fact

In this instance, the student has a 504 Plan which includes a safety plan. Because KSDE does not have jurisdiction to interpret Section 504 law, a determination of compliance with the law will not be made.

Conclusion

Therefore, a violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), by failing to follow the student's safety plan, resulting in the student being disciplined, *is not substantiated*.

Summary of Conclusions/Corrective Action

1. **ISSUE ONE:** A violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), by failing to evaluate the child upon request from the parent, is substantiated.
 - a. **CORRECTIVE ACTION:**
 - i. Schedule an evaluation of the student as required under IDEA.
 1. Date due: December 31, 2023
 - ii. Provide a letter to KDSE that an offer to evaluate was made to the parent and parent's response.
 1. Date due: December 31, 2023
 - iii. Training to staff on child find.
 1. Date due: December 31, 2023
 - iv. Provide a letter to KDSE confirming the training was completed.
 1. Date due: December 31, 2023
2. **ISSUE TWO:** A violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), by failing to follow the student's safety plan, resulting in the student being disciplined is not substantiated.
 - i. **CORRECTIVE ACTION:**
 - ii. No corrective action required.

Investigator

Complaint Investigator - Ashely Niedzwiecki

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)