

SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT
FILED AGAINST
UNIFIED SCHOOL DISTRICT #___
ON SEPTEMBER 13, 2021

DATE OF REPORT: OCTOBER XX, 2021

This report is in response to a complaint filed with our office by _____, on behalf of her son, _____. For the remainder of this report, _____ will be referred to as "the student." Ms. _____ will be referred to as "the student's mother," "the parent," or the "the complainant."

Investigation of Complaint

Diana Durkin, Complaint Investigator, spoke by telephone with the parent on September 22, 2021. On September 15 and 29 and October 4, 5, and 7, 2021, the investigator spoke via telephone with Dr. JaKyta Lawrie, Executive Director of the Wyandotte Comprehensive Special Education Cooperative. On September 28, 2021, the investigator spoke by telephone with [SM], principal of _____ Middle School.

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

- Prior Written Notice for Evaluation or Reevaluation and Request for Consent dated September 23, 2019
- Notice of Meeting dated September 12, 2019
- Evaluation/Eligibility Report dated October 4, 2019
- IEP for the student dated October 4, 2019
- Prior Written Notice for Identification, Special Education and Related Services, Educational Placement, Change in Services, Change in Placement, and Request for Consent dated October 4, 2019
- Prior Written Notice for Identification, Special Education and Related Services, Educational Placement, Change in Services, Change in Placement, and Request for Consent dated November 15, 2019

- Prior Written Notice for Identification, Special Education and Related Services, Educational Placement, Change in Services, Change in Placement, and Request for Consent dated January 7, 2020
- Notice of Meeting dated September 15, 2020
- IEP for the student dated September 30, 2020
- Prior Written Notice for Identification, Special Education and Related Services, Educational Placement, Change in Services, Change in Placement, and Request for Consent dated February 25, 2021
- Email dated March 9, 2021 from an administrative assistant at the middle school to the parent
- Email dated August 18, 2021 from the superintendent to the director of special education et. al.
- Email dated August 18, 2021 from the director of special education to the superintendent et. al.
- Email dated August 18, 2021 from the building principal to the superintendent et. al.
- Email dated September 8, 2021 from the building principal to middle school staff
- Prior Written Notice for Identification, Special Education and Related Services, Educational Placement, Change in Services, Change in Placement, and Request for Consent dated September 14, 2021
- Section of an online district procedures manual related to move-in students <https://sites.google.com/site/wycospecialed/>

Background Information

This investigation involves a 13-year-old boy who has received special education support since age three. The student was given a diagnosis of spastic quadriplegic cerebral palsy. He is non-ambulatory and has difficulty with upper extremity control and coordination. Abnormal muscle tone associated with his cerebral palsy diagnosis makes volitional movement difficult and makes joint contractures which limit his range of motion. The student relies on others to push his wheelchair for safe mobility in the educational environment.

The student has been diagnosed with Cortical Visual Impairment (a neurological visual impairment), astigmatism, and extropia. An ophthalmologist has recommended that

he wear glasses. In February of 2018, a functional vision assessment determined that the student exhibited at least a 10 second delay for processing visual information. Concerns were also found with regard to pupillary response, convergence, visual fields, muscle imbalance, tracking, scanning, and distance and near acuity.

Early hearing testing with the student indicated flat line response. The student was given a cochlear implant for his right side by the University of Kansas Medical Center and wore it briefly. The parent reports that the implant is no longer worn.

The student needs adult support at all times during his school day and total assistance in all areas of daily living. He wears diapers and is checked and changed in the school setting every 2 hours. In the school setting, the student is tube fed twice per day at approximately 8:00 AM and 12:00 PM. He has a trach which needs to be suctioned as needed throughout the school day.

During the 2020-21 school year, the student received the following special education services:

- 425 minutes of nursing care as a special education service four day a week;
- 395 minutes of nursing care as special education service one day a week;
- 88 minutes of inclusion support for electives in the general education setting four days a week;
- 60 minutes of inclusion support for electives in the general education setting one day a week;
- 317 minutes of direct life skills instruction in a special education setting one day a week;
- 337 minutes of direct life skills instruction in a special education setting three days a week;
- 90 minutes of direct life skills instruction in the special education setting one day a week;
- 20 minutes of physical therapy in a special education setting two days a week;
- 15 minutes per quarter of consultative occupational therapy;
- 15 minutes per semester of consultative deaf/hard of hearing services;
- 15 minutes per quarter of consultative speech/language services; and
- 20 minutes a month of consultative adaptive physical education support.

The student was to receive transportation services each day the school was in session on a special education vehicle. The student was to have nursing support on the bus each time the student was transported.

The student's September 30, 2020 IEP included an Individualized Health Care Plan which called for twice daily tube feeding, trach suctioning, management of a gastrointestinal tube and mickey button malfunctions, diapering/changing throughout the school day, and implementation of a health crisis plan should the need arise.

The September 2020 IEP also stated that the student needed to be taken from his wheelchair and stretched on a floor mat, placed in a supine stander or held in the nurse's lap at least 25 minutes each morning and 25 minutes each afternoon. Any newly introduced staff member was to receive thirty minutes of lift/transfer training to ensure that the student could be repositioned safely.

Issue

In her complaint, the parent alleges the following:

The district has failed to provide nursing services that would allow the student to attend school. As a result, the student has received none of the special education services required by his current IEP.

Applicable Statutes and Regulations

When a student moves into a new school district, the school district must take reasonable steps to promptly obtain the child's records, including the individualized education program (IEP) and supporting documents and any other records relating to the provision of special education or related services to the child, from the previous school district in which the child was enrolled. The previous school district in which the child was enrolled must take reasonable steps to promptly respond to the request from the new school district 34 C.F.R. 300.323(e), (f), (g)).

When a child with an exceptionality transfers into a new school district in Kansas, with a current IEP from a previous school district in Kansas, the new school district, *in consultation with the parents*, must provide a free appropriate public education (FAPE) to the child, including services comparable to those described in the child's IEP from the previous school district. Once the new district receives the current IEP, the new school district may adopt the child's IEP from the previous school district or develop and implement a new IEP. If the new district develops a new IEP, parent consent is

required for any substantial change in placement or any material change in services proposed in the new IEP (K.S.A. 72-3430(b)(6)).

State regulations, at K.A.R. 91-40-16(b)(3), require districts to have an IEP in effect for each exceptional student at the beginning of each school year. At K.A.R. 91-40-19(a), state regulations also require that each school district, teacher, and related services provider shall provide special education and related services to an exceptional child in accordance with the child's IEP.

School districts must take steps to actively recruit, hire, train, and retain qualified personnel to provide special education and related services to children with disabilities (34 C.F.R. 300.156; 34 C.F.R. 300.207). Neither federal nor state statutes or regulations give the parent the right to select the teacher or other special education service provider assigned by a district to work with their child. However, it is the responsibility of the district to ensure that the individuals who are employed to provide special education services to a student are able to deliver the services specified in the student's IEP.

Parent's Position

The parent asserts that the district failed to proactively communicate with her regarding a transition plan for the student and did not provide her with any information regarding nursing services for the student until the night before school started.

District's Position

It is the position of the district that it is ready, willing, and able to provide in the middle school setting all of the special education services specified in the student's September 30, 2020 IEP. The district agrees that the student is unable to attend school in the absence of one-on-one nursing services but contends that a nurse was available to provide services to the student on his first day of school. It is the district's position that it was the choice of the parent to keep the student at home. The district asserts that it has attempted to employ the nurse who worked with the student in his previous district or to secure a nurse through any agency the parent deems acceptable so that the student can come to school. The district further asserts that it has offered to provide homebound services to the student until he returns to school, but the parent has opted not to accept the district's offer.

Investigative Findings

In February of 2021, the student's family purchased an unfinished home in the district. On March 9, 2021, the parent called the middle school serving her new neighborhood to give notice that the student would be transferring into the district for the 2021-22 school year. The parent spoke with an administrative assistant/athletic secretary at the school who sent a follow-up email to the parent on that same date which included a release of information form.

The "SPED COOP Handbook" which outlines special education procedures for the district states that a school psychologist is to take the following actions when a student moves into the district:

- Review the Student Services section of the application completed by the parent under Person Documents in Infinite Campus to determine if the parent reported the student has an IEP.
- Call the last school of attendance to obtain verbal confirmation of services and placement.
- Email all service providers, Teacher Leader (secondary only), and School Counselor (secondary level for scheduling) outlining services to provide; services will start immediately.
- Email copies of IEP to all service providers upon receipt of records.
- Complete and mail [to the parent] a Prior Written Notice for Services and Placement outlining the comparable services from the previous IEP that will be provided. Give a copy of the Prior Written Notice for Services and Placement outlining the comparable services from the previous IEP to the case manager.
- Email the following documents to the appropriate MIS Data Assistant for processing and linking:
 - Evaluation Report, IEP and Prior Written Notice for Services and Placement outlining the comparable services from the previous IEP that will be provided.
- Email the case manager and related service providers, if applicable, that within 40 school days, by the annual review date if it expires before the 40 school days, or immediately if the IEP is expired that an IEP must be written and a meeting held following the annual IEP review process.

According to the building principal, the school psychologist sent the parent a second release of information form on or around April 22, 2021. The parent reports that she provided the district with a signed release of information and orders for care from the student's doctor.

The parent also reports that she and the administrative assistant/athletic secretary spoke again in April 2021. The parent states that, during this second phone call, she provided contact information for the nurse who had been providing school-based support for the student during the 2020-21 school year. The parent reports that she told the administrative assistant/athletic secretary that the nurse had expressed strong interest in following the student to his new school.

On May 24, 2021, the administrative assistant/athletic secretary sent the parent an email asking whether the nurse was an employee of the student's then current school district or an employee of an agency contracted by that district to provide nursing services for the student.

According to both the parent and the district, there was no further contact between the parties until the end of July 2021. The school psychologist who sent the parent a release of information form in April 2021 ended her contract and left the district in early June 2021. A replacement school psychologist hired by the district through a placement agency began work on August 13, 2021. The special education coordinator who had been assigned to work with the middle school also left the district on July 1, 2021.

No evidence was provided by the district to show that either the school psychologist who contacted the parent in April 2021 or the school psychologist who began working in the district in August 2021 provided the parent with prior written notice of the district's plan to provide services comparable to those listed in the student's September 30, 2020 IEP.

On July 29, 2021, the parent sent the administrative assistant/athletic secretary a copy of her application for a change of address for a new driver's license as proof of residence in the district. The parent also provided a copy of immunization records from the student's physician. The parent completed a form enrolling the student in the district for the 2021-22 school year on July 29, 2021.

On August 13, 2021, the parent sent an email to the administrative assistant/athletic secretary asking "Do you know why they have not reached out to the nurse for [the student] yet?"

According to the executive director of special education, contact was made with the nurse who had served the student in the previous district, but, at that time, that nurse

declined to transfer with the student. It is the position of the parent that the nurse was reluctant to take the new position because she did not want to abandon the previous district so close to the start of the new school year.

According to the director, the district decided to put a “temporary” nurse in place for the student while contract agencies engaged in further discussion with the nurse who had been serving the student in his previous district. If it became clear that the student’s former nurse was unavailable, the district would then search for another nurse to fill the position on a permanent basis.

On August 18, 2021, at 1:37 PM, the district’s superintendent sent an email to the executive director of special education, the special education coordinator for the middle school, and others stating

We are needing to prepare for [the student] arriving at [the middle school] tomorrow. At this point in time, mom is saying that if they don’t have the nurse from [the previous school district], she will not send [the student] to school. However, we know by law, that we need to be prepared to educate the student otherwise it legally puts both the COOP and [the school district] in harm’s way. (We have told the mother to have his current nurse apply with the agency.)

Please find below the information a temp nurse will need for tomorrow:

- Report time 6:40 AM at the student’s home
- Support during the day
- Student loads bus at 2:10
- Should arrive home between 2:20 and 2:30
- Skills: Run a trach and administer his tube feeds
- IEP Health Plan will be provided in the morning at [the middle school]

At 1:59 PM on August 18, 2021, the executive director of special education sent an email to the head of nursing services for the district, copying the superintendent and others. The director wrote “Can you please let us know who we can get to [the middle school] tomorrow. We will have to use agency (sic) we are not able to do direct hire.”

At 6:40 PM, the principal of the middle school sent an email to the superintendent, copying the director and others. The principal wrote

I apologize for the late email. I was able to speak with [the parent] over the phone about 5:45. I shared that a temp nurse would arrive at her home at

roughly 6:45. The bus would arrive at 7:00. [The parent] is not accepting this plan. She is not comfortable with a nurse that does not know her son being charged with her son's care. [The parent] does not want the nurse showing up at her home. It is her intention to keep [the student] home.

The boy's nurse for the last 4 years is [nurse's name.]. Does anyone know the name of the company that I could offer to [the parent]. She can alert [the nurse] where to apply. I am not sure if that is the answer to the problem; there is no guarantee that [the nurse] would be hired. I explained that to [the parent].

Can someone call off the temp nurse for tomorrow? The mom is not accepting this temporary plan.

The student remained at home on the first day of school and no special education services were provided.

On September 8, 2021, the building principal sent an email to the special education coordinator, school psychologist, assistant principal, and others stating that he had spoken to the parent who had agreed to meet with school staff on September 14, 2021. According to the executive director and the principal, there had been no other meetings with the parent since the start of the school year on August 19, 2021.

Those present at the September 14, 2021 meeting included the building principal, an assistant principal, the special education coordinator, a physical therapist, the parent and the student. The district provided the parent with prior written notice of a proposal for "getting [the student] started in school." The district proposed that the student be provided with 45 minutes of service four days a week in "the homebound format...with specific time scheduling coordinated between the parent and service providers." According to the prior written notice document this action was proposed because the student required

1:1 nursing care in order to access his special education services in the regular school setting. Due to a lack of nursing staff, he has been unable to attend in the school setting. Compensatory services are needed to make up lost service time beginning from the first day of school 8/19/21. Until a nurse is hired and [the student] is able to begin attending school, homebound services will be provided.

The services proposed in the prior written notice form were to begin on September 20, 2021, but the parent did not agree to the implementation of the district's proposed plan. The student remained at home. No special education services were provided by the district, and no changes were made to the student's IEP.

The executive director of special education continued to reach out to the parent to try to find a way to get the student in school. The district contacted a nursing placement agency that was preferred by the parent but was unable to secure a nurse through that agency. The district was able to secure a nurse through a different agency, but the parent was unwilling to accept a nurse from that agency.

The parent told both the director and the investigator that having someone come to the house to provide direct life skills instruction was not necessary and could be inconvenient. The parent asked the district not to send anyone to the home although she did express interest in having the district provide physical therapy (PT) services to the student. The district has attempted to secure a PT through a contract agency and has interviewed potential candidates. Most of those interviewed were not willing to go to the student's home.

An annual IEP meeting for the student was held on Tuesday, September 28, 2021.

The district continued to try to employ a 1:1 nurse for the student using the placement agency preferred by the parent as well as other agencies considered "acceptable" by the parent. Ultimately, the nurse who had worked with the student in his previous district was hired by one of these agencies and was initially scheduled to begin work in the district on October 11, 2021 at which time the parent says she would allow the student to come to the middle school. The start date for the nurse was subsequently delayed until October 20, 2021. The parent has opted to have no services in the home until the student returns to school.

Summary

The parent contacted the district in March 2021, soon after the family had purchased a home in the district, and spoke with an administrative assistant/athletic secretary at the middle school the student would be attending for the 2021-22 school year. A release of information form was sent to the parent at that time and again in mid-April. The parent provided the district with contact information regarding the nurse who was at that time providing support to the student in his then current district and informed the district that the nurse was interested in following the student when he moved.

There was no contact between the parent and the district between the end of May and July 29, 2021 when the parent completed the student's enrollment. The parent was not provided with prior written notice of the district's plan to provide services comparable to those specified in the student's September 30, 2020 IEP. On the evening of August 17, 2021, the principal of the middle school called the parent to let her know that a nurse would be arriving at the student's home in the morning to ride the bus with the student for his first day of school. The parent told the principal that this arrangement was unacceptable to her because she did not want the student to be served by someone who was unfamiliar with his needs. The student remained at home with no services.

On September 14, 2021, the parent and student came to the school for a meeting with the building principal, an assistant principal, the special education coordinator, and a physical therapist. The district proposed that the student be provided with services in the home, but the parent did not want that service.

The district continued to try to find a way for the student's former nurse to be employed or to find another nurse through a placement agency the parent considered acceptable. The district also continued to try to hire a PT to provide in-home services to the student. The student's former nurse is now scheduled to begin work in the district on October 20, 2021, at which time the parent has indicated she will allow the student to come to school.

Conclusions

It is clear that the decision to keep the student at home was made by the parent. The district stood ready, willing, and able on the first day of the school year to provide the special education services – including nursing services – called for in the student's September 30, 2020 IEP.

Special education statutes and regulations do not give the parents the right to choose who will be providing special education and related services to their child. Rather, it is the responsibility of the district to recruit, hire and train qualified personnel to provide special education and related services to children with disabilities and to ensure that the individuals who are employed to provide services are able to deliver the services specified in a student's IEP. The parent does not allege that the middle school staff was unable to provide services called for in the student's September 30, 2020 IEP. The parent did not allege that the nurse who was scheduled to work with the student was unqualified or lacked the necessary training to provide the services he required.

Rather, the parent asserts that the nurse was unfamiliar with the student, and the parent did not feel comfortable sending her son to school.

Evidence shows that the district's transition of the student did not follow the procedures outlined in its own special education handbook. The parent was not provided with prior written notice of the district's decision to provide the student with comparable services to those outlined in the IEP developed by his previous district. This inconsistency with district procedures did not result in a violation of law because the law does not require the district to issue a prior written notice when it is not proposing to make any change to an IEP.

However, the law does require the district to consult with parents of children who are moving into the district about how it will provide comparable services. The first meeting with the parent to discuss services for the student was held on September 14, 2021. There is no record of any "consultation with the parent" prior to the start of school about how services would be provided nor any record of an attempt by the district to address the issue of nursing services, a clear concern of the parent. Had that consultation actually taken place and had the parent been informed of the district's plans for providing services to the student, this complaint might never have been filed.

Because the district failed to consult with the parent regarding the provision of a FAPE to the student upon his transfer into the district, a violation of special education statutes and regulations has been identified.

Corrective Action

Information gathered in the course of this investigation has identified noncompliance with special education statutes and regulations. Specifically, a violation was identified with regard to K.S.A. 72-3430(b)(6) which requires districts to consult with parents when making decisions regarding the provision of FAPE to students who move into a Kansas district with an active IEP from another Kansas district.

Therefore, USD #__ is directed to take the following actions:

- 1) Submit to Special Education and Title Services (SETS), within 40 days of the date of this report, a written statement of assurance stating that it will comply with K.S.A. 72-3430(b)(6) by consulting with parents when making decisions regarding the provision of FAPE to students who move into the district with an active IEP.

- 2) a) Within 40 days of the date of this report, USD #__ shall review and, as needed, revise the district's procedure for the management of student transfers when the transferring student has active IEP. The plan should include adequate steps to ensure that the transfer process for a student is completed even when there is a change in staff. The district shall then develop and submit to SETS for review and approval a plan for training of special education staff regarding these procedures.

b) Once the training plan described above under Corrective Action 2)a) has been approved by SETS, USD #__ must implement that training within 30 school days after SETS approval.
- 3) No later than 5 school days before implementing the approved training plan described in Corrective Action 2 above, the executive director of special education of the Wyandotte Comprehensive Special Education Cooperative and the administrator of the student's school shall complete and submit to SETS a pre-training administrator survey.
- 4) No later than 5 school days after implementing the approved training plan described in Corrective Action 2 above, every staff member who participated in the training shall complete and submit to SETS a post-training staff survey. The TASN GSTAD Assistant Director will provide the survey and further instructions in a follow-up communication with the district's Director of Special Education.
- 5) No later than 40 days after the date of this complaint, USD#__ shall submit to SETS for review and approval a plan for the delivery of 200 minutes of compensatory PT services to this student. These compensatory services are not intended to compensate the student for services missed because the parent opted to keep the student at home but because the first consultation with the parent regarding the provision of a FAPE to the student was conducted on September 14, 2021. The parent has told both the district and the investigator that she considers PT the most essential service for the student. The 200 minutes specified in this Corrective Action reflect PT services that would have been provided had the student been in school between August 18 and September 14, 2021.

Within 10 school days of the date the plan for compensatory services has been approved by SETS, the district shall present the plan to the parent who will have

the option of either accepting the plan as written, or accepting a portion of the plan, or rejecting it.

Within 5 school days of the date the plan is presented to the parent, USD #___ must notify SETS of the parent's decision to accept or reject the plan.

- 6) Further, USD #___ shall, within 10 calendar days of the date of this report, submit to SETS one of the following:
 - a) A statement verifying acceptance of the corrective action or actions specified in this report;
 - b) a written request for an extension of time within which to complete one or more of the corrective actions specified in the report together with justification for the request; or
 - c) a written notice of appeal. Any such appeal shall be in accordance with K.A.R. 91-40-51(f).

Right to Appeal

Either party may appeal the findings or conclusions in this report by filing a written notice of appeal in accordance with K.A.R. 91-40-51(f)(1). The written notice of appeal may either be emailed to formalcomplaints@ksde.org or mailed to Special Education and Title Services, 900 SW Jackson St, Ste. 602, Topeka, KS, 66612. Such 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), which can be found at the end of this report.



Diana Durkin
Complaint Investigator

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)