

KANSAS STATE DEPARTMENT OF EDUCATION
SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT
FILED AGAINST
UNIFIED SCHOOL DISTRICT #__
ON SEPTEMBER 1, 2021

DATE OF REPORT SEPTEMBER 30, 2021

This report is in response to a complaint filed with our office by _____, mother, on behalf of her son, _____. In the remainder of this report, _____ will be referred to as “the student” and _____ will be referred to as “the mother” or the “the parent.”

The complaint is against USD #__ (_____ Public Schools). In the remainder of the report, USD #__ may be referred to as the “school,” the “district” or the “local education agency (LEA).”

The Kansas State Department of Education (KSDE) received the complaint on September 1, 2021. The KSDE allows for a 30-day timeline to investigate the child complaint, which ends on October 1, 2021.

Investigation of Complaint

Nancy Thomas, Complaint Investigator, interviewed the parent by telephone on September 3 and September 17, 2021 as part of the investigation.

[A], Executive Director of Special Services at USD #__, was interviewed by telephone on September 3, 2021. USD #__ made the following school staff available for a telephone interview on September 17, 2021:

- [DC], Assistant Director of Special Services
- [GM], _____ South High School Assistant Principal
- [BH], _____ South High School Administrative Intern and 504 Coordinator
- [CH], _____ South High School Counselor
- [MJ], _____ South High School Special Education Resource Teacher and 504 Coordinator

In addition, [JS], _____ South High School Psychologist, was interviewed on September 20, 2021.

In completing this investigation, the Complaint Investigator reviewed documentation provided by both the parent and the LEA. The following materials were used as the basis of the findings and conclusions of the investigation:

- Student's Enrollment Packet for USD #__ dated July 22, 2021
- Email dated August 13, 2021 at 9:33 a.m. from [CH], Counselor, to the parent
- Email dated August 13, 2021 at 11:13 a.m. from the parent to Mr. [H]
- Email dated August 13, 2021 at 12:09 p.m. from Mr. [H] to the parent
- Email dated August 13, 2021 at 6:21 p.m. from the parent to Mr. [H]
- Email date August 16, 2021 at 7:08 a.m. from [BH], Administrative Intern and 504 Coordinator, to the parent
- Email date August 16, 2021 at 8:30 a.m. from the parent to Mr. [H]
- Notes of the August 16, 2021 phone call to the parent at 1:10 p.m. written by [JS], School Psychologist
- Email dated August 16, 2021 at 1:34 p.m. from Ms. [S] to Mr. [H], Mr.[Ho], and [GM], Principal
- Zoom meeting invitation dated August 17, 2021 at 7:01 a.m. from Mr. [H] to the parent and school team with a link to a meeting scheduled for August 19, 2021 at 1:45 p.m.
- Email date August 17, 2021 at 8:35 a.m. from the parent to Mr.[H], Mr.[Ho], and Ms. [S]
- Attachment to the parent's August 17, 2021 email titled *List of Accommodations / Modifications to Discuss*
- Attachment to the parent's August 17, 2021 email titled *Sensory Processing Questionnaire*
- Email dated August 18, 2021 at 8:42 a.m. from the parent to Mr. [Ho]
- Email dated August 18, 2021 at 10:43 a.m. from Mr. [Ho] to the parent
- Email dated August 20, 2021 at 8:04 a.m. from the parent to Mr. [Ho] and [MJ], Special Education Teacher and 504 Coordinator
- Email dated August 20, 2021 at 11:40 a.m. from Ms. [J] to the parent

- Email dated August 20, 2021 at 1:28 p.m. from the parent to Ms.[J], Mr.[Ho], and Ms. [S]
- Email dated August 20, 2021 at 3:20 p.m. from the parent to Mr. [Ho]
- Email dated August 23, 2021 at 8:58 a.m. from Mr. [Ho] to the parent
- Email date August 23, 2021 at 9:52 a.m. from the parent to Ms. [J] and to Mr. [Ho]
- Email dated August 30, 2021 at 6:57 p.m. from the parent to Ms. [J], Mr.[Ho], and Ms. [S]
- Email dated August 31, 2021 at 7:07 p.m. from Ms. [J] to the parent
- Email dated August 31, 2021 at 10:08 p.m. from the parent to Ms.[J], Mr. [Ho], Ms.[S], and Mr. [M]
- USD #__ Response to the Allegations dated September 12, 2021
- USD #__ School District Calendar for the 2021-22 school year

Background Information

This investigation involves a 15-year-old male student who is enrolled in the ninth grade at _____ South High School in USD #__ for the 2021-22 school year. The parent reports the student was originally evaluated in the second grade while attending school in Oklahoma and found eligible for special education services under the exceptionality category of gifted. The parent revoked consent for special education services when the student was in fourth grade. The student last attended USD #__ during fifth grade at Briarwood Elementary School and for sixth grade at Frontier Trails Middle School. The parent stated that the student attended seventh grade in Spring Hill Public Schools (USD #230) through an online instruction program. Last school year, the student was enrolled in the eighth grade at Wheatridge Middle School in Gardener-Edgerton Public Schools (USD #231). The parent reported the student was referred to the building's student intervention team towards the end of that school year.

Issues

The Individuals with Disabilities Education Act (IDEA) and Kansas Special Education for Exceptional Children Act give KSDE jurisdiction to investigate allegations of noncompliance with special education laws that occurred not more than one year from the date the complaint is received by KSDE (34 C.F.R. 300.153(c); K.A.R. 91-40-51(b)(1)).

Based upon the written complaint and an interview, the mother raised one issue that was investigated.

ISSUE ONE: The USD #___, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to respond appropriately to a parent request for a special education evaluation during the 2021-22 school year.

Positions of the Parties

The parent believes that USD #___ failed to respond to her request for a special education evaluation for her son during the 2021-22 school year. She reported that she told school staff that the student would need a building success plan or 504 plan prior to the beginning of the school year and that she sent an email to multiple school staff on August 17, 2021 indicating that her son may need an IEP. The parent believes that any mention of an IEP from a parent should be considered a parent request for a special education evaluation for the student. She indicated that school staff were aware of her concerns as well as his medical conditions and therapy but failed to initiate a special education evaluation. The parent stated that she requested a meeting with school staff to discuss her concerns three different times in less than five days before a meeting was finally held on August 19, 2021. The parent believes the district's failure to respond appropriately has resulted in her son not being provided with the services and supports he needs to be successful in school.

USD #___ reported the parent first requested a meeting to discuss her concerns about her son in a conversation with [GM], _____ South High School Assistant Principal, during freshman orientation on August 9, 2021. The LEA staff stated that the parent sent an email on August 17, 2021 which included an attachment titled "Accommodations/Modifications to Discuss." In that email, the parent stated:

I have now determined assessment for an IEP may be needed if the list of accommodations/modifications is beyond what your building is open to under a 504.

A meeting to discuss the parent's concerns was held on August 19, 2021 and the parent's list of accommodations/modifications was reviewed. As a result of the

meeting, a plan was developed to implement accommodations/modifications in the classroom while pursuing a Section 504 evaluation. The district noted that parent did not request an evaluation for special education at the meeting.

USD #__ reported that school staff had no reason to believe the parent was requesting a special education evaluation until she filed the complaint on September 1, 2021. The LEA stated:

[The] Parent has never requested a special education evaluation from the District. In fact, she has stated on multiple occasions verbally and in writing the opposite, that she did not want a special education evaluation and only wanted to pursue a Section 504 evaluation.

Findings of the Investigation

The following findings are based upon a review of documentation and interviews with the parent and LEA staff in USD #__.

_____ South High School Freshman Orientation was held on Monday, August 9, 2021. The first day of school for USD #__ was a half-day on Thursday, August 12, 2021 with Friday, August 13, 2021 being the first full day of school. Due to a dental procedure, the student's first day of school was Monday, August 16, 2021.

The parent and Mr. [M], Assistant Principal, verbally discussed the parent's concerns at the _____ South High School Freshman Orientation on Monday, August 9, 2021.

Mr. [Ho], School Counselor, contacted the parent on Friday, August 13, 2021 via email at 9:33 a.m. indicating that Mr. [M] had made him aware of the parent's concerns and requested the parent contact him to discuss the situation further. The parent responded via email at 11:13 a.m. stating:

On a side note, I should have done this a year ago but all grades have been promoted until now. We need to get a building success plan or 504 in place for him as soon as possible or y'all will have a trainwreck in front of you. That is honestly my greatest concern. How soon can a meeting be scheduled? Also, can you send the release of the information form so I sign that for the student's psychologist and medical provider?

At 12:09 p.m. on August 13, 2021, Mr. [Ho] replied via email to the parent and indicated the he was making the building nurses and the 504 coordinators aware of her concerns and that they would be assisting with her requests.

[BH], Administrative Intern and 504 Coordinator, emailed the parent on Monday, August 16, 2021 at 7:08 a.m. to ask for clarification regarding her request for a meeting and the release of information form. Mr. [H] also requested more information about the student. Mr. [H] provided information about 504 plans and IEPs to try to clarify what the parent was requesting. Mr. [H] stated:

What is the student's disability? That will help us determine which direction we need to move. Regardless, there is a 60 day evaluation period where we collect data to figure out what is best for him. Let me know and I will follow up with the appropriate people.

The parent responded via email at 8:30 a.m. reiterating that she was requesting a Release of Information form as well as a meeting to discuss "the best steps to be taken for my child".

[JS], School Psychologist, called the parent at 1:10 p.m. on August 16, 2021. Notes from that phone conversation reflect that the student has anxiety, autism, a mood disorder, and some motor tics; that the student is seeing a therapist from the Joshua Center; that the student was previously in a gifted program and has poor interpersonal skills; and that the student doesn't like school and doesn't do assignments but gets A's on tests. The notes also state, "Parent is interested in a 504, doesn't want an IEP because she feels that he does not need direct intervention."

Following her telephone conversation with the parent, Ms. [S] sent an email at 1:34 p.m. to Mr.[H], Mr. [Ho], and Mr. [M] to clarify the parent's meeting request and stated:

I just spoke with the student's mother. I think I alleviated her confusion and got down to what she was wanting. Basically, she was speaking of a release of information for us to communicate with his outside therapist. He speaks with a therapist every other week at the Joshua Center. I will be sending her a release electronically. She also gave me information on what was going on with him such as anxiety, autism, and mood disorders. She

specifically is wanting a 504 because she feels like direct instruction is not necessary. He is according to her, gifted academically and doesn't need any interventions. But he has a negative view of school and doesn't always complete his work. She said he does very well on tests though, which according to her frustrates teachers. She wants to meet to put a 504 plan in place with accommodations such as a quiet, separate setting for tests. She doesn't know what else, but wants to discuss with the team. I told her that Brett [Mr.[H]] would reach out regarding the 504.

At 7:01 a.m. on Tuesday, August 17, 2021, Mr. [H] sent a Zoom meeting invitation to the parent and the school team of Mr. [M]; Ms. [S], Mr.[Ho]; [EC], Assistant Principal; and Melissa[J], Special Education Teacher and 504 Coordinator. The Zoom meeting was scheduled for September 19, 2021 at 1:45 p.m.

On August 17, 2021 at 8:25 a.m., the parent emailed Mr.[H], Mr. [Ho], and Ms. [S] and stated:

I am attaching a Sensory Processing Questionnaire as well as a list of accommodations/modifications to discuss. After speaking with both the student and Kris [Kris Martin, Therapist at the Joshua Center], I have now determined assessment for an IEP may be needed if the list of accommodations/modifications is beyond what your building is open to under a 504. As I said Jenny, I really can't identify a need for direct instruction and I believe there would be a real struggle for goal creation. Possibly executive functioning, social skills, and/or interpersonal skills. He does not have any academic deficits."

The team met on Thursday, August 19, 2021 at 1:45 p.m. via Zoom regarding the student. Participants in the meeting included the parent, the student, Mr. [H], Ms. [J], Mr. [M], Ms. [C], Ms.[S], and Mr.[Ho]. Neither school staff nor the parent provided the investigator with any notes from this meeting.

The school staff reported that the team reviewed and considered the parent's list of proposed accommodations, agreed that all of the accommodations proposed were reasonable, and reached consensus that eight of them should be put into place immediately as part of a general education Student Intervention Plan. The

accommodations would be implemented until the 504 initial evaluation could be completed, eligibility determined, and, if eligible, a 504 plan developed.

The school staff indicated that the parent fully participated in the meeting and agreed with the team's decision. The school team also noted that the student provided input during the meeting and believed the selected accommodations would be helpful. The school staff reported the parent stated that she felt that an IEP would not be necessary and that the student was not interested in gifted education services during the team meeting.

The parent reported that Ms. [S] facilitated the meeting and that the team did review and discuss the list of accommodations/modifications she had provided in her email. She acknowledged that the team chose several of the accommodations/modifications from the list to be implemented in the school setting.

On August 20, 2021 at 11:40 a.m., Ms. [J] emailed the parent with a synopsis of the team meeting and stated:

I am the student's 504 Case Manager, [M], please feel free to contact me with any questions or concerns. During the evaluation process the following accommodations will be provided for the student while in the school setting:

1. Leave class early to avoid hallway congestion – 2 minutes
2. Alerts when there is an assembly or drill
3. Shortened assignments to the essential elements
4. Able to type assignments
5. Copy of teacher notes when requested
6. Break during class (towards the middle of the class period)
7. Hot Pass to go to safe person/space if necessary
8. Access to the testing center to provide a quiet non-competitive setting for tests or quizzes

I will be requesting information from teachers and the student periodically during the evaluation process to assess these accommodations. We can change, add, or reduce accommodations during the evaluation process as needed to ensure we have the best plan for the student in place.

The parent acknowledged receipt of this email at 1:28 p.m. on Friday, August 20, 2021 by thanking Ms. [J] and indicating she planned to make a copy of the email for the student.

On Monday, August 30, 2021, the parent sent an email to Ms. Jaeger at 6:57 p.m. expressing a concern that the accommodations were not being provided to the student. The parent then stated:

I'm also questioning the need to take all of your 60 days for a medically documented disability that substantially impacts the student. How long will you let him fail before you intervene?

On Tuesday, August 31, 2021 at 7:07 p.m. Ms. [J] emailed the parent to respond to her concerns. Ms. [J] stated:

As part of the 504-evaluation process, I request data on accommodations usage from all of the student's teachers and support team on a regular basis. The accommodations we have listed are being offered to the student daily. The major factors impacting the student's grades is his attendance and sleeping in his classes. He has missed 50% of the school days and this reflects in his grades. I know his teachers are working with him to catch up on missing work and he has access to our all-school academic intervention time (A.I./Advisory on our schedule) to receive help from any of his teachers as requested. The student has gone to see his counselor two times since our last Zoom meeting. Since the student has a hot pass to see his counselor, and this is an intervention offered to all students, we did not include it on his list of accommodations. Please encourage him to use this support as needed. Over the remaining evaluation days, I will continue to collect data and monitor the student's progress. We have contacted the health professionals you signed releases for us to obtain medical records vital to our evaluation and have yet to receive correspondence.

August 31, 2021 at 10:08 p.m., the parent replied to Ms.[J]' email and stated:

Nothing you are saying is supporting that he does not have a disability. If you would complete due diligence and speak to his medical providers as well as take my input you would recognize everything you stated are direct

impacts of his disabilities and your team's inability to provide any support. I do appreciate your documentation of negligence in the matter.

Applicable Regulations and Conclusions

Federal regulations implementing the IDEA at 34 C.F.R. 300.311 111(a) and Kansas state Board of Education regulations at K.A.R. 91-40-7 require each school districts to adopt and implement policies and procedures to identify, locate, and evaluate all children with disabilities exceptionalities residing in its jurisdiction who need special education and related services. Special education means specially designed instruction which is adapted, as appropriate to the needs of an eligible child, the content, methodology, or delivery of instruction (34 C.F.R. 300.39(a)(1), (b)(3); K.A.R. 91-40-1(kkk), (lll)).

Federal regulations implementing the IDEA at 34 C.F.R. 300.301(b) allows either the parent of a child or school district to initiate a request for an initial evaluation to determine if a child is eligible for special education and related services. State regulations at K.A.R. 91-40-7(c)(3) allows a school district to refer a child for a special education evaluation if the parent requests, and give written consent for, an evaluation of the child, and the school district agrees that an evaluation is appropriate..

In this case, the parent shared her concerns with school staff prior to the beginning of the school year on Monday, August 9, 2021 and initially requested a meeting with school staff. The parent continued to share her concerns and to request a meeting through subsequent emails dated between Friday, August 13, 2021 and Monday, August 16, 2021 as well as in a telephone call with the school psychologist on August 16, 2021.

Documentation shows that on Friday, August 13, 2021 at 9:33 a.m., the parent stated, "We need to get a building success plan or 504 in place for him as soon as possible." The notes from the August 16, 2021 telephone call between the parent and the school psychologist at 1:10 p.m. include the statement "Parent is interested in a 504, doesn't want an IEP because she feels that he does not need direct intervention." An email synopsis of that telephone call sent to school staff on August 16, 2021 at 1:34 p.m. by the school psychologist stated, "She wants to meet to put a 504 plan in place with accommodations such as a quiet, separate setting for tests."

On Tuesday, August 17, 2021, the parent provided USD #__ with a document titled *List of Accommodations / Modifications to Discuss* in an email. The parent contends that she requested an initial special education evaluation in that email by stating:

After speaking with both the student and Kris [Kris Martin, Therapist at the Joshua Center], I have now determined assessment for an IEP may be needed if the list of accommodations/modifications is beyond what your building is open to under a 504.

However, the parent's statement only indicates that parent wanted to pursue an assessment for an IEP if the list of accommodations/modifications could not be provided through a Section 504 Plan. School staff held a meeting to review the parent concerns and the list of accommodations/modifications on Thursday, August 19, 2021 which was 10 days from the date of the parent's initial request for a meeting and was during the student's first week of the new school year. Interviews found that the list of accommodations/modifications was reviewed and discussed at the August 19, 2021 meeting by the parent, the student, the two 504 coordinators, two assistant principals, the school psychologist, and the counselor.

An email synopsis of the meeting dated Friday, August 20, 2021 documented that the team reviewed and considered the parent's list of proposed accommodations, agreed that all of the accommodations proposed were reasonable, and reached consensus that eight of them should be put into place immediately as part of a general education Student Intervention Plan. The accommodations were to be implemented until the 504 initial evaluation could be completed, eligibility determined, and, if eligible, a 504 plan developed.

Based on this information, USD #__ reasonably determined that the parent was not requesting a special education evaluation at this time because the parent had stated she only wanted to pursue an IEP for the student IF the list of agreed upon accommodations could not be provided under a 504 plan. In this case, as a result of the August 19, 2021 meeting, mutually agreed upon accommodations were being provided and the student was being evaluated for eligibility for a Section 504 Plan.

In addition, there is no evidence before the investigator to indicated that USD #__ had reason to suspect that the student was in need of special education services / specially

designed instruction because of a disability; thus USD #__ had no reason or obligation to refer the student for an initial special education evaluation when the parent filed the child complaint with KSDE on September 1, 2021. The student's first day of school at _____ South High School was on Monday, August 16, 2021. There had only been a total of 12 days of school as of the filing of this complaint (Wednesday, September 1, 2021), of which the student had been absent a total of 50% of the time. The district was already providing the agreed upon accommodations in the school setting as general education interventions and was pursuing a Section 504 evaluation. In addition the student's teachers were working with the student to catch up on missing work during the all-school academic intervention time.

Based on the foregoing, a violation of special education statutes and regulations is not substantiated for failing to respond appropriately to a parent request for a special education evaluation. In addition, a violation of special education statutes and regulations is not substantiated for failing to initiate an agency referral for an initial special education evaluation in this case.

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), which can be found at the end of this report.

Nancy Thomas

Nancy Thomas, Complaint Investigator

K.A.R. 91-40-5(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)