

KANSAS STATE DEPARTMENT OF EDUCATION
SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT
FILED AGAINST
UNIFIED SCHOOL DISTRICT #__
ON SEPTEMBER 20, 2021

DATE OF REPORT: OCTOBER 20, 2021

This report is in response to a complaint filed with our office by _____, on behalf of her daughter, ____. 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

On September 24 and October 6 and 19, 2021, the complaint investigator spoke via telephone with DC, Assistant Director of Special Services for USD #___. The investigator spoke by telephone with the parent on October 8, 13, and 15, 2021.

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

- IEP Progress Report for the student for the 2018-19 school year
- IEP for the student dated May 2, 2019
- Attendance record for the student for the 2019-20 school year
- Notice of Meeting dated January 13, 2020
- Notice of Meeting dated March 20, 2020
- IEP for the student dated April 21, 2020
- Email dated August 29, 2020 from the parent to KSD staff
- Email dated September 12, 2020 from the parent to KSD staff
- Email dated September 23, 2020 from the parent to the KSD head teacher
- Email dated September 24, 2020 from the parent to KSD staff
- Email exchanges dated September 28 and 29, 2020 between the head teacher, the parent, and other KSD staff
- Email exchange dated September 30, 2020 from the head teacher to the parent

- Notice of Meeting dated October 5, 2020
- Email dated October 5, 2020 from the head teacher to the parent
- Notice of Meeting dated October 5, 2020
- Prior Written Notice for Identification, Initial Services, Educational Placement, Change in Services, Change of Placement and Request for Consent dated October 15, 2020
- Draft IEP for the student dated April 15, 2021
- Progress Report covering the period of May 21, 2020 through April 14, 2021
- Statement dated October 14, 2021 from the nurse at KSD
- Statement dated October 14, 2021 from the administrative assistant at KSD
- Daily schedule for the student for the 2021-22 school year
- Email exchanges between the parent and KSD staff throughout the 2020-21 school year

Background Information

This investigation involves a nine-year-old girl who is enrolled in the third grade in a state-supported school for the deaf located in her home town. In her complaint, the parent describes the student's disabilities as follows:

- Hearing impaired;
- language delay (in American Sign Language or ASL);
- speech impaired;
- multiple physical disabilities related to a rare genetic mutation that caused abnormal brain and nerve system development;
- an inability to drink liquids and speak;
- less than normal balance;
- weak muscles so that she needs ankle braces;
- past joint dislocations of the elbow, shoulder, and hips;
- delayed nerve responses resulting in delayed pupil dilation and contraction, delayed sweat response, and chronic constipation and digestion issues resulting from a "slow gut;"
- bleeding disorder; and
- limited time for productive energy before needing to rest.

By report of the parent, the student's disability has a profound impact on her energy level and her capacity for sustained engagement in the school setting. While the parent strongly asserts that she wants to have the student in school,

surgeries and other medical interventions have caused the student to be absent for extended periods. Additionally, the parent states that she recognizes that the student has often arrived at school late but insists that these late arrivals result from the parent's desire to have the student in the best possible situation to be able to learn. According to the parent, complications related to the student's condition often keep the student from sleeping and waking on a regular schedule. Personal care can take more time than anticipated, and problems often arise unexpectedly with resulting delays.

The student began receiving special education services at the preschool level in Missouri. According to the parent, the family moved into the district so that the student could attend the Kansas School for the Deaf (KSD), a special day school within district boundaries. The student has attended the state school since the 2015-16 school year, assigned to early childhood classes from the time of her entrance through the 2016-17 school year. For the next four years, the student was enrolled full time in the Center Based Program (CBP) classroom.

In the fall of 2020, the student's classroom assignment changed, and the student and her full time paraeducator moved into the 1st-2nd grade classroom. Because of COVID pandemic guidelines, students did not move between classrooms during the 2020-21 school year.

Currently, COVID restrictions on student movement in the school setting have eased, and the student now splits her day between two classrooms spending the mornings in the CBP classroom and afternoons in the 3rd grade classroom. She arrives at school at 8:30 AM and spends from 8:30 to 11:30 AM in the CBP classroom. She has lunch and recess from 11:30 until 12:30 PM when she joins the 3rd grade classroom. The student leaves school at 2:30 PM.

The student's April 21, 2020 IEP remains in effect pending the implementation of a revised IEP. An annual IEP review meeting was held on April 14, 2021, and a draft IEP was presented for review and discussion, but the team did not come to agreement on a revised IEP.

Issues

In her complaint, the parent raises four issues:

Issue One: The district moved the student from one classroom at the state school to a different classroom at the school without first providing the parent with either prior notice of the change or a satisfactory explanation as to why the change was made.

Parent's Position

The parent asserts that, at the beginning of the 2020-21 school year, the student was transferred from the CBP classroom - which the parent considered to be an appropriate educational setting - to a "non-specialized [other than American Sign Language] 1st-2nd grade classroom" at the state school. The parent contends that no mention of a plan to move the student to the 1st-2nd grade classroom was made during the annual IEP review in January 2020 or during an IEP team meeting held on April 21, 2020.

The parent states that no one from the school provided her with any "cogent" or "responsive" explanation regarding why the student was removed from the "special education classroom." She reports that she has only been told that "the entire school is special education" and the student was never removed from special education.

It is the position of the parent that the needs of the student were better addressed in the CBP classroom. The parent asserts that the classroom size and structure better met the needs of the student. She further asserts that the CBP program better addressed the student's cognitive delays because the greater level of paraeducator support in the CBP classroom allowed more time for the teacher to provide individual instruction time for each student. According to the parent, the CBP classroom had two paraeducators in addition to the one-on-one paraeducators assigned to some of the students in the room.

The parent states that the only paraeducator in the 1st-2nd grade classroom was the paraeducator assigned to the student. The parent reports that the 1st-2nd grade classroom teacher stated during parent-teacher conferences in February 2021 that she was only able to spend 15 minutes a day with the student.

District's Position

The district asserts that the student's placement in a special day school program was not changed when the student was moved during the 2020-21 school year from the CPB classroom at the school to the 1st-2nd grade classroom.

While acknowledging that it would have been best to convene an IEP team meeting to discuss the rationale for a change in the student's classroom assignment, it is the position of the district that all of the classrooms at KSD provide services to students in a special day school placement. Any change in classroom assignment for the student represents a change in the location or setting for the delivery of services within the special day school, not a change of placement.

According to the district, the administrative decision to change the classroom assignment for the student was made because

- there were concerns about the student modeling inappropriate behaviors from other students in the CBP classroom;
- the student's language skills were somewhat higher than other students in the CBP classroom;
- the student's ability to hear and benefit from spoken English had improved; and
- the school was following Center for Disease Control (CDC) guidance regarding social distancing and contact tracing.

The district contends that the instruction delivered to the student in the 1st-2nd grade classroom was specially designed in accordance with her IEP to meet her unique and individual needs – just as it had been in the CBP classroom.

Applicable Statutes and Regulations

The IEP team – a group of people, including the parent and other persons knowledgeable about the child, the meaning of evaluation data, and placement options – makes the decision about the child's educational placement. Educational placement refers to the educational environment for the provision of special education and related services rather than a specific place, such as a specific classroom or school building (K.A.R. 91-40-1(t)).

School districts are to make available a range of placement options, known as a continuum of alternative placements, to meet the unique educational needs of children with disabilities. The continuum of alternative educational placements includes instruction in general education classes, special classes, special schools, home instruction, and instruction in hospitals and institutions (K.A.R. 91-40-21(b); 34 C.F.R. 300.115(b)(1)).

According to K.A.R. 91-40-4, when a student is placed at one of the Kansas state schools for the deaf and blind, the placement must be based on a child's IEP, which must indicate a need for educational services provided at the state school. To ensure that teams continue to consider whether placement of the child in the home school district (generally considered the least restrictive environment or LRE) would be more appropriate, LRE must be considered at each annual IEP meeting.

Parents must provide consent for any substantial change in placement (more than 25% of the child's school day) or material change in services (increase or decrease of 25% or more of the duration or frequency of a special education service, a related service, or a supplementary aid or a service) (K.S.A. 72-3430(b)(6)).

Investigative Findings

At the annual IEP review meeting for the student on April 21, 2020, the team discussed the least restrictive environment for the placement of the student. In addition to placement at KSD, the team considered the option of providing services to the student in her neighborhood school as well as the option of serving her in a center-based program located in another school in the district with a teacher of the Deaf and an interpreter. The team determined that KSD – a special school – continued to be the most appropriate placement for the student. The decision to continue the placement of the student at KSD was based on the student's need for "direct signed communication for her educational needs...[and] social interaction with peers who can communicate fluently in sign language...[as well as the presence of] adult deaf role models."

The "Special Education and Related Services" portion of the "Anticipated Services to Be Provided" section of the student's April 2020 IEP states that the student is to receive "Special Education [Deaf Education]" for 256 minutes per day, five days a week in "KSD classrooms." The IEP does not specify that the student

must be served in the CBP classroom or any other specific classroom at the school.

Within KSD, the 1st-2nd grade classroom provides special education services to students, modifying curriculum and instruction to meet individual needs. Students are placed in the classroom based on age rather than academic achievement levels. Most students in this classroom have language delays and are instructed below their grade levels. Instruction in this classroom is offered in both sign and spoken English.

The CBP classroom typically provides special education services to students with more challenging behaviors. The students are usually pre-linguistic. This classroom utilizes visual materials, sign, and some spoken English. The language, both sign and English, used in the classroom is more limited than the 1st-2nd grade classroom due to the limited language levels of the students. Students served in the CBP classroom are more likely to have cognitive impairments and may never reach a linguistic level. Instruction is provided to students using both state extended standards and the general education curriculum. This classroom allows for more breaks and hygiene times in addition to additional instruction in self-regulation strategies for behavior. All students in the CBP classroom are supported one-on-one by paraeducators.

In the Spring of 2020, the student was beginning to model undesirable behaviors from other students in the CBP classroom. In addition, the student was performing at a somewhat higher level than the other students in the CBP classroom with regard to her language skills. She demonstrated hearing within the normal range, and the bilingual specialist reported that she was showing a preference for English expression (rather American Sign Language (ASL)).

In the Fall of 2020, KSD was implementing Center for Disease Control (CDC) social distancing and contact tracing requirements. The student underwent surgery in September of 2020 and first attended school on October 1, 2020. At the time of the student's entrance, there were 6 students and 5 adults in the CBP classroom and 7 students and 1 adult in the 1st-2nd grade classroom. Adding the student and her assigned paraeducator to the CBP classroom would have increased the total number of people in that room to 13. Adding the student to the 1st-2nd grade classroom brought the total there to 10.

In the 1st-2nd grade classroom, the student's instruction was individualized to meet her unique needs. According to the district, the student received similar

instructional time from the highly qualified teacher in the 1st-2nd grade classroom as she would have received in the CBP classroom. After the change to the 1st-2nd grade classroom, the student continued to receive all of the other services specified in her IEP including speech, physical therapy, occupational therapy, audiology services, and school health services.

Summary and Conclusions

On April 21, 2020, the student's IEP team conducted an annual review of the student's IEP. The student had been receiving services at KSD since the 2017-18 school year, and the team determined that she should continue to receive her special education "Deaf Education" services in KSD classrooms – all of which are special education classrooms. The student's April 2020 IEP did not specify that services to the student were to be delivered in any particular classroom at the school.

When the student started school on October 1, 2020, the school placed the student in the 1st-2nd grade classroom rather than in the CBP classroom where she had been placed since she was first enrolled in the school. The decision to make that change was based upon a number of factors including

- CDC guidelines;
- the student's performance level which was somewhat higher than peers in the CBP classroom;
- her demonstrated preference for English rather than ASL expression; and
- observations by staff that the student was modeling undesirable behaviors of peers in the CBP classroom.

The student continued to receive 256 minutes, five days a week of special education services as well as all other services specified in her April 2020 IEP. The student continued to receive one-on-one support from a paraeducator and individualized instruction from a highly qualified teacher.

While the district – and the investigator – recognize that communication with the parent regarding the change to the student's classroom assignment should have been more explicit, the change in classroom assignment for the 2020-21 school year was not a change in placement. The student continued to receive special education services in a special school – the state school for the Deaf. A

violation of special education statutes and regulations is not substantiated on this issue.

Issue Two: The denial of an appropriate education in the 2020-21 school year has caused regression and the deprivation of educational benefits for the student.

Parent's Position

The parent asserts that the student regressed academically, developmentally, and socially during the 2020-21 school year. The parent states that while the student had in the past enjoyed school, she had, by the spring of 2021 begun to resist going to school, threw papers in the trash rather than posting them on the family refrigerator, and displayed disinterest or defiance at school.

District's Position

The district contends that the student actually did make progress during the 2020-21 school year despite an excessive number of days absent or tardy. It is the position of the district that the parent has drawn inaccurate conclusions about the student's performance based upon flawed comparisons of student data.

Applicable Statutes and Regulations

Federal regulations, at 34 C.F.R. 300.101(a), require that a student who has been determined eligible for, and in need of, special education services, and whose parents have provided written consent for the provision of those services, be provided with a FAPE (Free Appropriate Public Education). 34 C.F.R. 300.17(d) states that FAPE means, in part, special education and related services provided in conformity with an individualized education program (IEP) that meets the requirements of 34 C.F.R. 300.320 through 300.324.

In *Endrew F. v. Douglas County School District*, the Supreme Court addressed the concept of "FAPE" noting that the educational program reflected in a student's IEP should be "reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances."

Investigative Findings

In support of her allegations, the parent pointed to the student's performance on the Kaufman Assessment Battery for Children II (KABC-II). The KABC-II is, according to the company website at <https://www.pearsonassessments.com>, an individually-administered, norm-referenced instrument designed to measure the cognitive processing of children and adolescents ages 3 through 18. The test is not designed to measure either progress or regression within the educational setting.

When assessed using the KABC-II in April 2018, the student earned a standard score of 53 on the Nonverbal Index of the instrument, indicating that the student was performing below the first percentile when compared to age peers. When the test was administered again in March 2021, the student's standard score on that same Nonverbal Index was 43, also below the first percentile. The parent and the district both state that these scores reflect a "confidence level" of 90%, meaning that at each assessment point there is a 90% probability that the student's true performance score on the test would fall between a pre-established range of values. For the April 2018 assessment, that range was 50-62; for the March 2021 assessment, that range was 41-51. Because these ranges overlap, the difference between these two scores is not considered to be statistically significant.

In support of her allegations regarding regression and deprivation of educational benefit, the parent asserts that the student's language development remained at the 2-year to 3-year level from 2019 until 2021. In her complaint, the parent states that from 2017 to 2020, the student had been described as using "3 sign sentences to communicate, [and] in 2019 and autumn 2020 she is starting to tell stories." However, in 2021, the parent states that the student is now described as using 1 or 2-word sign approximations at school in American Sign Language (ASL), the student's only expressive language.

The parent cites scores from two different language-related assessments as evidence of the student's regression and lack of educational benefit. However, the scores do not provide clear "apples to apples" comparisons as the instruments measure different constructs. One measure looks specifically at a student's understanding of basic concepts, while the other assesses a child's acquisition of sign language milestones.

In her complaint, the parent cites the student's performance on the Bracken Basic Concept Scale, which – according to the company website at <https://www.pearsonassessments.com>, evaluates a child's acquisition of basic concepts nonverbally, skills that are “strongly related to cognitive and language development as well as early childhood academic achievement.” The parent notes that when the student was assessed using the scale in 2019, the student scored in the 3.1-5.1-year range in receptive language and at the 3.1-4.6-year range in expressive language.

The Bracken has a ceiling age of 6 years, 11 months. At the time the student was assessed, she was 7 years, 6 months of age – out of the age level for the test. According to the district, the test was administered for the purpose of gathering information on language development and mastery of various milestones. The assessment tool was used to determine what concepts had or had not been mastered in order to plan curriculum-relevant instruction. No evidence was provided to show that this test was administered again after May of 2019 to determine whether any gains in the mastery of basic concepts had been made.

The Visual Communication and Sign Language Checklist (VCSL) looks at key milestones in Sign Language development from birth to the age of 5. The district reports that the student was functioning in the 1 to 2-year instructional range in the spring of 2018. The majority of ASL communication skills in the birth to 1-year stage were mastered with the remaining skills mostly in the inconsistent levels. Two ASL goals were created to be carried out by the classroom teacher: 1) Use negative headshakes alone or with signs, and 2) Correctly communicate wants and needs. Within the IEP year, the student was able to correctly communicate wants and needs, but had not mastered the use of headshakes to communicate negation alone or in conjunction with signs. No evidence was found by the investigator that showed that the student was using “3 sign sentences to communicate.”

The VCSL was administered again on April 2, 2019 and showed that the student was functioning in the 2 to 3-year instructional range. All skills in the birth to 1-year stage were reported as having been mastered. All but two of the skills in the 1 to 2-year range were mastered.

The VCSL was not administered prior to the development of the student's April 21, 2020 IEP due to school closure (COVID-19), but the bilingual specialist stated

he believed – based upon his conversations with the student’s classroom teacher – that at the time of the meeting the student was at the 2 to 3-year range instructionally.

On March, 11, 2021, the VCSL was administered once again. The student had maintained the skills that she had previously displayed in the 2 to 3-year range. At the time a revised IEP was proposed on April 15, 2021, the bilingual specialist determined that the student was operating in the 2 to 4-year range instructionally. The student was responding to questions with head shakes and one to two-word signs or sign approximations.

According to the “Communication” portion of the “Present Levels of Academic and Functional Performance” section of the IEP proposed by the district on April 14, 2021, the student had made “great progress this year in being able to tell 3-4 things that happen in a story” using 1 to 2-word sign approximations, one of the goals established in the student’s April 21, 2020 IEP. Results of two vocabulary measures place the student below the first percentile with regard to expressive vocabulary (Expressive One-Word Picture Vocabulary Test) and receptive signed vocabulary (Carolina Picture Vocabulary Test). These scores correlate closely with the student’s past performance on the KABC- II.

According to the proposed April 15, 2021 IEP, the student was also given the Language Processing Test – 3 which measures language processing and semantic development. The student’s scores on this instrument “were improved from her 2019” test” and “above what would be expected from her measured language levels.”

The parent points out that the student had demonstrated one-to-one correspondence in counting objects up to 6 and 7 at the time of her April 21, 2020 IEP but was only showing consistent one-to-one correspondence up to 5 at the time an IEP was proposed on April 15, 2021.

The parent states that in 2019, the student was described as “chatting with adults, and interacting well with peers in a classroom setting. She responded to other children’s questions, but avoided initiating conversations, games and interactions at recess.” The parent reports that in 2020, the student was “helping younger students and students in the CBP classroom who need more support.” In 2021, the parent reports that the student was “described as having little desire to be around her peers.” According to the parent, the student was

resisting going to school in the morning. She no longer wanted to post her school work on the refrigerator at home and was reported by her teacher as not wanting to participate in class and exhibiting defiant delays in following directions.

By contrast, the school reports that the student has demonstrated that she can understand and learn classroom routines. According to the district, staff members have not witnessed any resistance on the part of the student to entering the school building. However, staff have observed defiance on the part of the student when she has been asked to participate in gross motor activities such as physical therapy or PE, and a goal was included in the proposed April 15, 2021 IEP to address that defiance.

IEP Progress Reports for the student show that the student did not achieve IEP goals associated with the student's April 21, 2020 IEP at the same rate as she had achieved goals for the previous IEP period. In fact, the student failed to achieve more than half of her goals. However, a number of factors may have impacted the student's learning over the period of March 2020 through August 2021.

For example, the student did not participate in remote learning opportunities offered by the school during the fourth quarter of the 2019-20 school year, a period of time during which the school was closed by order of the governor of the state due to the COVID pandemic. During that period, the student was, by report of the parent, not able to engage in school activities because of extreme fatigue resulting from her physical disabilities. The student never participated in "Facebook Morning Meetings" conducted daily at 10:00 AM. She did not attend any Zoom meetings with the physical therapist during the fourth quarter, and there was no response to weekly check-in emails. The student did not attend sessions with the speech therapist. No work was returned to the English/language arts teacher.

Though eligible, the student did not participate in the Extended School Year (ESY) program for the summer of 2020. The parent reports that the student continued to be unwell throughout the summer and, along with other family members, contracted COVID in late July. The student had been scheduled for a procedure at a local hospital but that was delayed into the Fall of 2020. In August, the family traveled to South Carolina to visit the parent's grandfather who was also recovering from COVID.

The 2020-21 school year for KSD began on September 9, 2020, but the parent's grandfather took a turn for the worse and the family remained in South Carolina. On September 29, 2020, the student underwent the surgery that had been previously delayed.

The student attended school for the first time during the 2020-21 school year on October 1, 2020 and attended on a 5-hour, shortened day basis. The student was absent for 14 additional days during the remainder of the 2020-21 school year and arrived at school late on 46 days. By comparison, the student was absent for 14 days between August 20, 2019 and March 13, 2020. She was tardy on more than 90 days during that same period.

Again, though eligible, the student did not participate in ESY for the Summer of 2021. The student has continued to attend school on a shortened day basis for the 2021-22 school year and again has frequently been absent or tardy.

Summary and Conclusions

The COVID pandemic caused this student, like students across the state and nation, to miss the last quarter of the 2019-20 school year. The student's physical condition kept her from participating in the remote learning opportunities put in place by the school during those weeks to mitigate learning loss. The student was unable to take part in any interactions with her class or any sessions offered by other special education providers to address her goals.

Due to health issues, the student could not participate in any extended school year (ESY) programs for the summer of 2020 even though she was eligible, and the student did not return to school until the end of the first week of October 2020.

After her return to school in October, the student was absent for an additional 14 days during the 2020-21 school year. When combining absences with the days missed because of her late start, the student missed 30 days of instruction during the year. Additionally, the student was tardy during the 2020-21 school year for an additional 46 days.

If the 56 days the student was unable to participate in remote learning opportunities in the third quarter of the 2019-20 school year are added to the 2020-21 absences, the student missed 86 days of instruction between March

12, 2020 and the end of the 2020-21 school year in addition to being unable to take advantage of ESY programming due to health issues.

By contrast, the student was absent for a total of 14 days for the 2019-20 school year prior to March 12, 2020. While IEP goals were achieved at a significantly higher level during the 2019-20 school year than during the 2020-21 school year, the student was also far more available for instruction during that earlier time period.

While this investigation did not find clear evidence that the student regressed during the 2020-21 school year, there is evidence to show that the student did not reach more than half of the goals set for her in her April 21, 2020 IEP. However, the investigator cannot draw a clear, causative relationship between the student's assignment to the 1st-2nd grade classroom and attainment of IEP goals. Student absences and late arrivals at school likely had a profound negative influence on the student's performance. Under these circumstances, a violation of special education statutes and regulations is not substantiated on this issue.

Issue Three: The student was denied services that were indicated on her 2020 IEP.

Parent's Position

It is the position of the parent that the student was denied the services of a bilingual specialist from October 2020 through April 2021 and as a result failed to achieve an IEP goal related to American Sign Language (ASL) skill acquisition. According to the parent, the student was attending school on a shortened day basis due to a physical condition that limited the student's energy level. The parent states that she was unaware that the student's delayed arrival at school was resulting in the student having missed the opportunity to work with special ASL instructors. It is the parent's contention that had she been made aware that ASL instruction was provided prior to the student's arrival at school, the student's window for school attendance could have been shifted so that the student could participate in the ASL instruction.

District's Position

It is the position of the district that the student has been provided with all of the services specified in her April 21, 2020 IEP and subsequent October 15, 2020

amendment. The district asserts that ASL immersion sessions with the bilingual specialist were not required by the student's IEP.

Applicable Statutes and Regulations

Federal regulations, at 34 C.F.R. 300.101(a), require that a student who has been determined eligible for, and in need of, special education services, and whose parents have provided written consent for the provision of those services, be provided with a FAPE (Free Appropriate Public Education). 34 C.F.R. 300.17(d) states that FAPE means, in part, special education and related services provided in conformity with an individualized education program (IEP) that meets the requirements of 34 C.F.R. 300.320 through 300.324. A district must implement a student's IEP as written.

Investigative Findings

According to the district, ASL immersion sessions are provided by the bilingual specialist as a short-term intervention. These sessions are intended to boost a student's skills in order for the student to function more successfully in the classroom. The student's April 21, 2020 IEP contains no reference to the provision of ASL immersion sessions for this student.

No immersion sessions were offered to any student at the school during the Fall semester of the 2020-21 school year due to social distancing rules and contact tracing related to the COVID pandemic. When immersion sessions resumed in January of 2021, the student had not yet been recommended for participation in immersion. The student was first recommended for ASL immersion sessions after an IEP team meeting on April 15, 2021. She began participating in those twice weekly, 45-minute sessions at that time and continues her participation to date.

The student's April 21, 2020 IEP includes (under the "Communication" portion of the "Present Levels of Academic and Functional Performance) an "American Sign Language Report" completed by the bilingual specialist at the school. Under "Recommendations," the specialist stated

[The student] benefits from intensive modeling of language, culture, and social behavior which is conducive to her receptive and expressive communication needs to maximize her social, academic, and language

learning. She is able to get that with her peers and teachers every day in her classroom. She will have one ASL Communication goal to be handled by her classroom teacher and paraprofessionals: Increase her expressive ASL vocabulary to at least 150 signs.

A goal related to ASL was monitored in October and December 2020 and in March and April of 2021. According to a Progress Report provided by the district, the student's ASL goal was

By May 2021, with visual prompts such a listing, [the student] will correctly (80% or greater accuracy) repeat in ASL instructions/directions given to her before performing an assignment or task in 4/5 trials.

The goal was not addressed via distance learning after the state governor mandated school closings for the fourth quarter of the 2019-20 school year due to the COVID pandemic. As noted above under Issue Two, the student was not available for any instruction until her return to school in the first week of October 2020. The student met the first benchmark (responding appropriately on one of five trials) by October 30, 2020. She met the second benchmark on December 23, 2020 by responding appropriately on two of five trials. However, the student did not attain benchmarks requiring appropriate responses on three and four of five trials when monitored in March and April 2021. As of April 14, 2021, she continued to respond appropriately on only two of five trials. At that time, the bilingual specialist wrote

[The student], if left alone, typically does not focus on instruction when delivered in ASL. She also does not stay on task with seat work. [Her] most preferred form of expression is through spoken English, but it is often unintelligible. She will respond again in ASL when prompted, but often copies signs until she lands on the correct sign. [The student] typically uses 1 to 2 signs per utterance. When working or receiving instruction in a large-group setting, [she] often loses focus, and unless redirected, will remain that way. [The student] benefits more from 1 on 1 instruction, and if she prefers the mode of spoken English, then that is her best mode for learning at this time. However, the bulk of instruction in her classroom is delivered in ASL. English is used mostly in the form of print to be read on screens and on paper. Spoken English is used by the majority of her peers in her classroom, but [she] does not engage with her peers. [The student] has missed a lot of instruction time this year

due to arriving late and leaving early daily. This goal has not been met. An alternate goal has been proposed and will be handled in 1 on 1 ASL tutoring.”

The district proposed a new ASL- related IEP goal at the student’s annual IEP team meeting on April 15, 2021. However, that IEP has not to date been finalized.

Summary and Conclusions

The student’s April 21, 2020 IEP did not require that the student be provided with ASL services from a bilingual specialist. The ASL-related goal contained in the April 2020 IEP was to be “handled by her classroom teacher and paraprofessionals.” No ASL immersion classes were offered to any student during the first semester of the 2020-21 school year because of COVID-related protocols. ASL immersion classes were reinstated for the second semester, but this student was not recommended for inclusion in that program until after April 14, 2021. The parent’s allegation that the student was denied services that were specified in her April 21, 2020 IEP is not substantiated.

Issue Four: The student’s parents were denied access to appropriate information.

Parent’s Position

The parent asserts that “deception” was used to exclude the student’s parents from the decision-making process regarding the student’s assignment to the 1st-2nd grade classroom for the 2020-21 school year. It is the position of the parent that, in September and October of 2020, she was kept from speaking with staff (the nurse and an administrative assistant) about her concerns, was given incorrect information about the class assignment, and was not afforded an opportunity to participate meaningfully in parent/teacher conferences or in decisions regarding the change in the student’s classroom. The parent states that had she been asked about a potential reassignment of the student to the 1st-2nd grade classroom for the 2020-21 school year, she would have asked questions about possible benefits of such a move and would have asked how progress or regression after the move would be assessed.

It is the position of the parent that the school nurse was prohibited from speaking to the parent about the management of the student’s midday water

bolus. Specifically, the parent asserts that the nurse could not talk with her about who would be managing the bolus and where.

The parent also contends that she should be consulted at the beginning of each school year about the student's program – particularly when there is a change in teaching staff. She reports that, during the student's April 21, 2020 IEP meeting, the decision was made to focus on capitalized letters during the 2020-21 school year, but the parent asserts that the worksheets that she saw during the 2020-21 school year did not focus on that skill. It is the position of the parent that had she met with the student's teacher at the beginning of the school year, she could have confirmed that work would focus on established IEP goals.

District's Position

The district asserts that the parent was invited to and fully participated in IEP team meetings regarding the student including the annual IEP review on April 21, 2020 and an IEP amendment meeting on October 15, 2020 and was provided with notice of both of these meetings. The district also states that the parent participated in an informal Zoom meeting held at the request of the parent on October 2, 2020 with the teacher, long-term sub, paraeducator, nurse, and Principal. Further, the parent was in frequent communication with KSD staff throughout the period specified by the parent in her complaint as demonstrated by multiple emails to and from KSD and the parent.

Applicable Statutes and Regulations

In order to strengthen the role of parents in the special education process, Congress mandated that schools afford parents the opportunity to be members of any decision-making team for their child, including eligibility, initial evaluation and reevaluation, and development of an individualized education program (IEP) for the provision of a free appropriate public education (FAPE). Schools are to ensure that parents have the opportunity to be members of the IEP team that makes decisions on the educational placement of their child. School teams recognize the contributions that parents can make to the process and how they can help ensure their child's educational progress (K.A.R. 91-40-25(a); K.A.R. 91-40-17(a); 34 C.F.R. 300.501(b) and (c)).

According to K.A.R. 91-40-17, each agency shall take steps to ensure that one or both of the parents of an exceptional child are present at each IEP meeting or

are afforded the opportunity to participate. This includes scheduling each meeting at a mutually agreed-upon time and providing written notice at least 10 days in advance of the meeting.

Special education statutes and regulations do not address processes, forms, and procedures that districts use with regard to the day-to-day communication with parents.

Investigative Findings

Communication with staff:

On Thursday, September 23, 2020, the parent sent an email to the head teacher stating that she would “like to visit with someone about [the student’s] school year. A phone call would be fine.” On Friday, September 24, 2020, the parent sent another email to the head teacher, nurse, administrative assistant, and others asking for a meeting “to discuss the school plan” for the student.

The head teacher responded to the parent on Monday, September 28, 2020 noting that she had been out of town from the previous Wednesday through Sunday, September 27, 2020 and was “catching up on emails.” The head teacher wrote that the student’s “school plan will be the same as it has been in the past....I am available to chat on the phone during the times below: Tuesday: 9 AM to 9:45 AM; Tuesday: 1 PM to 2 PM; Tuesday: 3:30 PM. If none of those work, I’ll look into Wednesday.”

The parent sent an email to the head teacher on September 28, 2020 asking “who will be the staff in the classroom with [the student] on a regular basis?” The head teacher wrote back on that same date, providing the name of the teacher and her substitute until the teacher’s maternity leave ended on October 5, 2020. The head teacher also provided the name of the temporary long-term substitute paraeducator who would be working with the student until a permanent paraeducator was hired.

In email exchanges between the parent and head teacher on September 28, 2020, the parent asked for a meeting with the student’s classroom teacher and the substitute. A Zoom meeting was proposed for October 5, 2020, the day of the classroom teacher’s return from her leave. The parent asked that the long-term paraeducator participate, and – in additional email exchanges on September 28, 2020 – the nurse asked to join in as well. After further email

exchanges regarding scheduling, a meeting was set for October 2, 2020. The meeting was scheduled to last 20 minutes, but the school team agreed that if more time was needed, the parent could meet separately with the teacher.

In a written statement dated October 14, 2021, the nurse for the school affirms that “at no time was I ever told or asked not to communicate with [the parent], and freely communicated with her as needed.”

In a written statement dated October 14, 2021, the administrative assistant identified by the parent in her complaint, writes in part

I have known (the parent) for approximately 5 years. In the past, (the parent) asked me some questions about her daughter, her daughter’s teacher, class assignment and the plans. I told her that she would need to ask her child’s teacher and/or...the principal since they are the appropriate people to talk to about it and may know more information about it than I do. I was never instructed by (the principal) or by any KSD staff not to speak to (the parent).

The district reports that the nurse has no recollection of any request from the parent for information about where the student’s midday water bolus would be managed.

Parent/Teacher conferences:

With regard to the October 12, 2020 parent/teacher conferences, the district acknowledges that there was an unintentional delay in the communication with the parent. The teacher inadvertently sent an email about conferences to an incorrect email address (jsknewton@... rather than js[]@...). When the parent had not signed up for a conference time as expected, the teacher sent a follow-up email offering three available conference times, but the message was once again directed to the incorrect address.

The head teacher discovered the error on October 15, 2020, and on October 16, 2020 sent an email to the parent explaining the situation. The parent responded via email, thanking the head teacher for “checking into the communication gap.”

Participation in IEP team meetings:

After the October 2, 2020 meeting with staff, an IEP team meeting was scheduled for October 15, 2020. The parent was provided with written notice of the meeting and participated in the meeting, subsequently providing written consent for a change to the student's school day moving her starting time from 9:00 AM to 9:30 AM and her departure time from 2:00 PM to 2:30 PM beginning on October 19, 2020.

The determination to place the student in the 1st-2nd grade classroom for the 2020-21 school year was an administrative decision based on factors described above under Issue One – not an IEP team placement decision.

Focus on established IEP goals:

The student's April 21, 2020 IEP contains the following goal:

“By April 2021, when given a written model, [the student] will be able to write 15 uppercase letters with 80% accuracy in 4/5 trials.”

The goal and related benchmarks were addressed by both the teacher and the occupational therapist (OT). The student received 20 minutes of direct OT service twice weekly. During therapy sessions, the OT focused on foundational skills the student needed in order to achieve her handwriting goal including such skills as hand strength to improve grip, visual perceptual skills and visual motor connection. The OT and classroom teacher collaborated to develop a capital letters practice workbook for the student to use in the classroom.

The student met established benchmarks for the goal in October and December of 2020, and March, 2021. By March 2021, the student was able when prompted to identify and write 20 uppercase letters independently when provided with a model with 80% accuracy in 4/5 trials (A, B, C, D, E, F, H, I, J, K, L, O, P, R, S, T, U, V, X, and Z).

Summary and Conclusions

The investigator found no evidence of any intent on the part of staff at the school to deceive the parent, to limit communication with staff, or to exclude the parent from any decision-making process. As a result of simple human error, communication with the parent regarding parent/teacher conferences was misdirected. The parent sent an email asking to speak about the plan for the student for the year, and the head teacher offered times for a phone

conference within three school days of receiving the parent's request. The parent was provided with prior notice of IEP team meetings held between April 1 and October 15, 2020 and attended those meetings. There is no evidence to show that any staff member was prohibited from speaking with the parent. Additionally, there is no evidence to support the parent's contention that the student's mastery of her OT goal was negatively impacted by the absence of a meeting between the parent and the teacher at the beginning of the school year. A violation of special education statutes and regulations is not substantiated on the allegations specified under this issue.

Corrective Action

Information gathered in the course of this investigation has not substantiated noncompliance with special education statutes and regulations on issues presented in this complaint. Therefore, no corrective actions are required.

Right to Appeal

Either party may appeal the findings in this report by filing a written notice of appeal in accordance with K.A.R. 91-40-51(f)(1). Due to COVID-19 restrictions, 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)