

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 _____, 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 #__ (_____ Schools) and the East Central Kansas Special Education Cooperative (ECKSEC). In the remainder of the report, USD #__ and ECKSEC 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 20, 2021. The KSDE allows for a 30-day timeline to investigate the child complaint, which ends on October 20, 2021.

Investigation of Complaint

Nancy Thomas, Complaint Investigator, interviewed the parent by telephone on September 21, 2021 and again on October 4, 2021 as part of the investigation. The parent did not respond to a request for an additional interview on October 6 or October 8, 2021.

USD #__ made the following school staff from _____ High School available for a telephone interview on October 5, 2021:

- Dr. [JH], Principal
- Ms. [BS], School Psychologist
- Ms. [NH], Special Education Teacher

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:

- Daily Check-In Logs dated from the fourth quarter of the 2020-21 school year
- Daily Classroom Participation / Assignment Logs dated from the second semester of the 2020-21 school year
- IEP Goal Progress Reports for the September 16, 2020 IEP
- Multidisciplinary Staffing Summary dated September 2, 2021
- Individualized Education Program (IEP) dated September 7, 2021
- IEP Team Meeting Notes dated September 7, 2021
- Timeline of the September 17, 2021 incident
- Email dated September 17, 2021 at 1:45 p.m. from Ms. [NH] to Dr. [JH]
- Incident Report written by [JS], Corrective Reading Teacher
- School year 2021-22 Discipline History written by Dr. [JH]
- Letter to the parent written by Dr. [JH] dated September 21, 2021 scheduling a manifestation determination meeting and an expulsion hearing
- Letter to the parent written by Dr. [JH] dated September 21, 2021 re-scheduling the manifestation determination meeting
- Email dated September 24, 2021 to [RB], Superintendent of USD #__, and Dr. [JH] written by Samara Klein, parent's attorney
- District's Response to the allegations dated October 1, 2021
- Email dated October 15, 2021 from the parent to the Complaint Investigator
- USD #__ District Calendar for the 2021-22 school year
- The 2021-22 _____ High School Student Handbook

Background Information

This investigation involves a 14-year-old male student who is enrolled in the ninth grade at _____ High School in USD #__ for the 2021-22 school year. The student previously attended the _____ Middle School, also in USD #__. The student's most recent reevaluation was conducted on October 20, 2020 without assessment. At that time, the multidisciplinary team determined the student continued to be eligible for special education and related services under the exceptionality category of emotional disturbance. The student has received special education and related services since the

second grade when he was initially evaluated and determined eligible for services on October 27, 2014.

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 implement the student's IEP, specifically the Behavior Intervention Plan (BIP), which allows the student to have his head down on his desk, during an encounter with the school resource office (SRO) on September 17, 2021.

Positions of the Parties

The parent believes the staff at _____ High School never wanted the student to attend their school and instead wanted him to attend the _____ Learning Center through ECKSEC. She reported the student was suspended during the second week of the school year. During a meeting on August 30, 2021, she stated that Dr. [JH], Principal, told her that they just can't have the student at their school due to not having the resources and that the student needed to go to the alternative school, _____ through ECKSEC. The IEP team met on September 2, 2021 and Dr. [JH] was told the student wasn't going to _____ per his recommendations and that other options had to be implemented to help the student be successful at school.

Another IEP team meeting was held on September 7, 2021 to review and revise the annual IEP with the parent and student in attendance. The parent stated:

At that time he was told that putting his head down was an option and that it seemed to be working and he was abusing it per his science teacher. That's when it was agreed upon that it could be continued. Later that day

the student and I went to _____ School for a walk through and it was agreed upon that it wasn't the right fit for the student at this moment and he was told that he needed to be careful because there was a target on his back.

The parent alleges that USD #__ and ECKSEC failed to follow the student's BIP during an incident that occurred on September 17, 2021. The parent reported that the student's BIP allows him to place his head down on his desk during class when he is feeling overwhelmed and needing a break. She indicated that the student did this during his reading class on September 17, 2021 and, because he was not allowed to do so, the situation escalated into a disciplinary incident involving the SRO and ultimately resulted in a recommendation for expulsion from school.

USD #__ and ECKSEC reported the student's BIP states that the he will put his head down on the table when he does not want to do something or avoid a task. The replacement behavior in his BIP states that the student is to have his head up and be engaged in the class activity. The interventions in the BIP are to encourage the student to take a walk with an adult or to go work in the special education resource classroom instead of allowing the student to sit with his head down during class and not participate.

In the Response to the Allegation, USD #__ stated:

USD #__ [and ECKSEC] strongly believes that we followed the student's Behavior Intervention Plan in this incident. The student was given ample opportunity to follow the replacement behavior at the direction of two teachers, a principal, and a School Resource officer. He finally complied at the last request only to go forward and attempt to destroy property as well as swear profanity at the principal. To protect himself and others he had to be restrained by the SRO. The total incident took approximately 15 minutes in the general education classroom and an additional five minutes once he left the classroom

Findings of the Investigation

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

During the fourth quarter of the 2020-21 school year, the student had several incidents that led to detentions and suspensions while attending _____ Middle School. The student's IEP dated September 16, 2021 included three goals related to appropriate behavior in the school setting and a BIP.

The first day of the 2021-22 school year was August 18, 2021. On August 25, 2021, the student was suspended for three days for profanity directed at a staff member, a Level Four Disciplinary Referral per the 2021-22 _____ High School Student Handbook.

On September 2, 2021, a Multidisciplinary Staffing was held to discuss placement options for the student. In attendance at this meeting were both the middle school and high school principals, the school psychologist, the special education teachers, the school counselor, and the special education director from ECKSEC. This team reviewed past behaviors and interventions including the Project STAY observations and consultations with staff; discussed current supports at the high school including access to a para educator and the need for a review and possible revision to the BIP; updated the student's class schedule; and had the process for a change of placement to the alternative school explained. Following the staffing, the parent and student visited the _____ Learning Center at ECKSEC.

The IEP team, including the parent, met on September 7, 2021 to review and revise the annual IEP and the BIP. The BIP shows the student is only completing 25% of his assignments on time and has refused to do anything in three out of his seven classes. The Individual information About the Student section of the BIP states:

The student will go through times in the school day where he might get upset about a certain situation, or encounter work that is difficult and want to shut down or refuse to do the school work. During these times, sometimes, the student can be redirected to refocus on school work or take a break from the situation. Other times, the student has a more

difficult time with his emotions. Sometimes the student will not want to do a classroom assignments or follow directions to the point that he becomes defiant. When he reaches this point, he doesn't follow directions. He will try getting away from the authority figure, kick the chairs, and refuse to do anything, etc. It is at this time that the student might be taken to the time out room to remove him from a possible dangerous situation for himself or others.

The baseline for the target behavior states that the student puts his head down on his desk when asked to do work as a means of avoiding the task 85% of the time. The replacement behavior is for the student to have his head up and be engaged in the task at hand. The interventions for when the target behavior occurs are 1) for the student to go for a short walk with an adult for three minutes or less or 2) for the student to go work in the special education resource room.

The IEP team meeting notes reflect discussion of the student putting his head down in the classroom. [JS], Corrective Reading Teacher, stated that the student does put his head down in class but this is not overused. It was noted that English is a trigger for the student and that he can be very disruptive. The notes reflect the student is allowed to put his head down if overwhelmed as a coping skill and that he will ask to leave if he feels angry or feels like he is losing control. [NH], Special Education Teacher, clarified that the student is allowed to put his head down "for a little bit" to gain self-control if he is feeling overwhelmed but that he will be re-directed to take a short walk with staff or go to the resource classroom where he can work on the assignment if his head down behavior is being used as task avoidance rather than as a coping skill.

The BIP also contains a Crisis Management Plan that shows the consequence for a Level Four Disciplinary Incident involving school safety as "minimum – out of school suspension; maximum – 186-day expulsion."

On September 17, 2021, the student was in the Corrective Reading class. The lesson consisted of the teacher reading a passage to the class followed by a test over the material. The student refused a reading book to follow along while the passage was being read. He put his air pods in his ears and laid his head down on the desk while

the teacher read the passage. He was not disruptive but then refused to sit up at his desk and take the test. Ms. [JS] asked the student to go to the resource room to work two separate times but the student refused to comply or even respond.

Ms. [NH] was called and she came to the classroom and the student continued to lay his head on the desk and refuse to respond or comply with her requests to go to the resource room. Dr. [JH] was then called and the student continued to refuse to comply or respond to his requests. Bob Ward, the School Resource Officer (SRO), then came into the classroom and attempted to gain the student's attention but was ignored. At this point, Dr. [JH] had Ms. [JS] take the entire class to the cafeteria to complete the test.

The SRO asked the student three times to get up and go the resource classroom and the student finally responded that he was sleeping. After several more requests from the SRO, the student did get up from his desk and slammed the classroom door open, which resulted in the clock being knocked from the wall, falling and breaking. The student then made his way through the hallways to the resource room where he immediately put his head back down on the table.

Dr. [JH] was concerned with leaving the student in the resource classroom with other students while he was so angry so the student was asked to come to the office to cool down. According to Ms. [NH], "the student leaped up, kicked his chair and grabbed his backpack. When he kicked the chair, one of the tennis balls from the legs flew off and hit another student in the head." The student then left the classroom and began cursing at Dr. [JH].

Dr. [JH] reported that "the student then forcefully pushed open the cafeteria door, kicked a locker, went into the cafeteria and threw a chair dolly and chair. The SRO restrained him and told him if he didn't calm down he would be put in handcuffs." The student called his parent and went to the office to await her arrival.

Dr. [JH] reported that the profanity directed toward staff and the behavior displayed by the student compromised school safety. Both are considered Level Four Disciplinary Referrals and the student was assigned 10 days of out of school suspension with a due

process hearing. A manifestation determination meeting was also scheduled to determine if the student's behavior was a manifestation of his disability as required by the IDEA.

Applicable Regulations and Conclusions

Federal regulation implementing the IDEA at 34 C.F.R. 300.324(a)(1)(i) require that IEP teams to consider the use of positive behavioral interventions and supports, and other strategies, to address the any behavior that impede a child's learning or the learning of others. Federal regulations implementing the IDEA at 34 C.F.R. 300.323(c)(2) require school districts to ensure that as soon as possible following the development of the IEP, special education and related services are made available to the child in accordance with the child's IEP. In addition, state regulations implementing the Kansas Special Education for Exceptional Children Act at K.A.R. 91-40-19(a) require each school district, teacher, and related services provider to provide special education and related services to the child in accordance with the child's IEP.

In this case, the student has a history of displaying behavior that impedes his learning and the learning of others. The student's IEP and BIP were reviewed and revised by the IEP Team, including the parent and the student, at an IEP Team meeting held on September 7, 2021.

The BIP identifies the target behavior as the student laying his head down during class as a means of task avoidance. The interventions for the target behavior are 1) for the student to go for a short walk with an adult for three minutes or less or 2) for the student to go work in the special education resource room.

In addition to these interventions, the parent and student also believe that the student was allowed to lay his head down as a coping strategy whenever he was feeling overwhelmed as a result of the discussion at the September 7, 2021 IEP Team meeting. While this is not clearly stated in the BIP, based upon the IEP Team Meeting Notes and Ms. Hasting's clarification, it appears that the student was allowed to lay his head down on his desk "for a short time" as a coping strategy but not as a means for task avoidance. It is noted that Ms. [JS], the Corrective Reading Teacher, was aware of this discussion as she was in attendance at the IEP team meeting held on September 7, 2021.

The disciplinary incident that occurred on September 17, 2021 initially began in the Corrective Reading class taught by Ms. [JS] when the student put his head down on his desk and placed his air pods in his ears. While it is not clear if laying his head down on his desk started as a coping strategy for being overwhelmed by the reading activity, it is clear that keeping his head down on his desk was task avoidance when he continuously refused to sit up at his desk and take the test.

Per the Intervention Plan in the BIP, Ms. [JS] asked the student to go to the resource room to work but the student refused to comply or even respond. Additional school staff including Ms. [NH], Dr. [JH] and the SRO also attempted to provide the intervention of having the student to go work in the resource room but, again, the student refused to comply or even respond. The other students in the Corrective Reading classroom were evacuated to the cafeteria and the student's behavior then escalated to include profanity and physical aggression which resulted in an unsafe school environment and the Crisis Plan consequences described in the BIP being followed.

Based on the foregoing, a violation of special education statutes and regulations is not substantiated for failing to implement the BIP as written in the September 7, 2021 IEP on September 17, 2021.

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)