

KANSAS STATE DEPARTMENT OF EDUCATION
SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT
FILED AGAINST
UNIFIED SCHOOL DISTRICT #__
ON SEPTEMBER 24, 2021

DATE OF REPORT: OCTOBER 20, 2021

This report is in response to a complaint filed with our office by _____, on behalf of her son, _____, and other unnamed eighth-grade students receiving special education services at the student's middle school. For the remainder of this report, _____ will be referred to as "the student." Ms. _____ will be referred to as "the student's mother," "the complainant," or "the parent."

Investigation of Complaint

Diana Durkin, Complaint Investigator, spoke by telephone with the parent on September 29, 2021. On September 29 and October 4, 5, and 7, 2021, the investigator spoke by telephone with Dr. JaKyta Lawrie, Executive Director of the Wyandotte Comprehensive Special Education Cooperative. The investigator spoke by telephone with [TS], principal of the student's school, on October 5, 2021. On October 6, 2021, the investigator spoke in a conference call with the principal and two special education teachers from the school, Julie Jones and Valerie Dennis. Ms. Jones supports sixth and eighth grade students at the school and is the student's case manager. Ms. Dennis works with eighth grade students and co-teaches the student's math class.

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

- IEP for the student dated March 10, 2021
- Class schedule for the student
- District produced chart showing how and when special education services are being provided to the student

Background Information

This investigation involves a thirteen-year-old boy who is enrolled in the eighth grade in his neighborhood middle school. The student was diagnosed as having a Tic Disorder but does not take any medications. His current IEP includes goals related to reading, writing, and asking for help when needed.

Issue

In her complaint, the parent alleges the following:

The district has failed to provide the special education services specified in this student's IEP and the IEPs of other 8th grade students.

Applicable Statutes and Regulations

Federal regulations, at 34 C.F.R. 300.323(c)(2), require that as soon as possible following development of the IEP, special education and related services are made available to the child in accordance with the child's IEP. State regulations, at K.A.R. 91-40-19(a), require that each school district, teacher, and related services provider shall provide special education and related services to an exceptional child in accordance with the child's IEP.

Parent's Position

The parent contends that she was informed during parent teacher conferences by two special education staff members that they were not providing services to the student in the general education classroom as specified in his IEP. The parent further contends that the student does not have a designated "case worker" (case manager) to oversee the student's special education service delivery.

District's Position

The district stipulates that not all of the services specified in the student's IEP have been provided since the start of the 2021-22 school year. The district also stipulates that some of the services required by the IEPs of other eighth grade students in the middle school have not been provided due to staffing shortages.

Investigative Findings

At Family Advocacy Day on September 17, 2021, the parent asked the student's general education math teacher if the student was receiving all of the special education services he was supposed to be receiving. The math teacher suggested that the parent speak to Ms. Dennis, the special education teacher who co-teaches the student's math class.

The parent recalls that two special education teachers were present during the September 17, 2021 conversation. Ms. Dennis has no recollection that a second special educator was present. However, both the parent and Ms. Dennis agree that Ms. Dennis told the parent that the student was in fact not receiving all of the services called for in his March 13, 2021 IEP because of staffing vacancies.

According to the executive director of special education for the district, two full time paraeducators have been assigned to the student's middle school since the start of the school year. Five special education teachers have also been assigned to the building since the beginning of the year, but a sixth position has remained unfilled. The district assigned two "instructional coaches" to the building to help provide coverage for the vacancy, but those instructional coaches were subsequently reassigned to buildings with even greater need. The executive director reports that the district attempted to provide the necessary general education coverage by changing student schedules and placing students in classrooms with special education support, but she stipulates that not every student's IEP requirements have been met.

The principal of the middle school as well as the special education teacher who spoke with the parent also confirmed in a telephone call with the investigator on October 6, 2021 that services for this student as well as other 8th grade students at the school have not been provided as required by the students' IEPs.

This student's March 13, 2021 IEP states that he was to receive 60 minutes of special education service in a general education setting for five days each week and 15 minutes of special education service outside of the general education setting every other week.

At the beginning of the 2021-22 school year, 60 minutes of special education support for the student in the general education setting was to be divided between two classes – science and English/language arts. Thirty minutes of

support was to be provided in each of these classes through the use of a paraeducator.

The science class support was provided beginning on the first day of the 2021-22 school year. However, the scheduled support in English/language arts was not provided consistently until September 20, 2021. No special education services were provided in the student's English/language arts class on

- August 12 and 13, 2021;
- August 16-18, 2021;
- August 23-27, 2021;
- August 30 through September 3, 2021;
- September 7, 8, and 10, 2021; or
- September 13-16, 2021.

An instructional coach provided the in-class support on August 19 and 20 and September 9, 2021.

On September 20, 2021, the district changed the student's schedule, placing him in an English/language arts class with paraeducator support. However, prior to this change, the district had failed since the start of the 2021-22 school year to provide a total of 11 hours of special education support to the student in the general education setting.

Special education services to the student outside of the general education setting were also not provided on a consistent basis. These services were first initiated on October 6, 2021 but had not been provided during the weeks of

- August 16-20, 2021;
- August 30 through September 3, 2021
- September 13-16, 2021; or
- September 27 through October 1, 2021.

In total, the district failed to provide 60 minutes (fifteen minutes on one day a week every other week for four weeks) of direct special education services outside of the general education setting.

As of the time of the writing of this report, the district had not yet filled the vacancy that contributed to the district's struggle to provide the services specified in the IEPs of students identified in this complaint.

Summary and Conclusions

Since the beginning of the 2021-22 school year, the district failed to provide this student with a total of 60 minutes of special education service outside of the general education setting and 11 hours of special education support in the general education setting. The district also stipulates that special education services for some (perhaps all) of the other eighth-grade students being served by the same group of service providers as this student were not provided because of the staffing vacancy specified in this report.

Corrective Action

Information gathered in the course of this investigation has substantiated a violation of special education statutes and regulations. Specifically, violations have occurred with regard to K.A.R. 91-40-19(a) which requires that each school district shall provide special education and related services to an exceptional child in accordance with the child's IEP.

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

- 1) Submit to Special Education and Title Services (SETS), within 40 calendar days of the date of this report, a written statement of assurance stating that it will comply with K.A.R. 91-40-19(a) by providing special education and related services to an exceptional child in accordance with each child's IEP.
- 2) Within 40 calendar days of the date of this report, USD #__ shall develop and submit to SETS for approval, a plan for the implementation of 60 minutes of compensatory special education services to be delivered outside of the general education classroom to the student named in this complaint as well as 11 hours of compensatory special education services in the general education classroom.
- 3) Within 5 school days of the date the district receives approval of the plan described above under Corrective Action 2, the district shall contact the

parent to schedule a meeting to present the approved plan to the parent. The parent shall have the option of either accepting the plan as written, or accepting a portion of the plan, or rejecting it. The district shall notify SETS of the parent's decision regarding delivery of compensatory services, and shall report back to SETS once the compensatory services have been completed.

- 4) Within 40 days of the date of this report, USD #__ shall provide to SETS a summary of the actions it has taken to date to hire staff to fill the vacancy described in this report. The district shall then provide SETS with weekly reports of additional actions taken by the district to fill this vacancy until such time as the position is filled.
- 5) Within 40 days of the date of this report, USD #__ shall provide a list of all eighth-grade students for whom special education services were not provided during the 2021-22 school year due to the staffing vacancy at the center of this complaint.
- 6) Within 40 days of the date of this report, USD #__ shall present to SETS, for review and approval, a plan to immediately mitigate any further loss of service to eighth-grade special education students that would otherwise result from this staffing vacancy. This plan should be implemented in no more than 10 calendar days from the date the plan is approved by SETS.
- 7) For each of the students described above under Corrective Action 5, USD #__ shall provide to SETS a report which includes the following information:
 - a) The name of the student;
 - b) the services each of these students was to receive (including frequency, location, and duration);
 - c) the specific services that were missed; and
 - d) the amount of compensatory service each student is eligible to receive.
- 8) By no later than December 16, 2021, USD #__ shall submit to SETS, for review and approval, a plan for the delivery of compensatory services to every student determined to have lost special education services due to the staffing vacancy. The plan should include the following information:

- a) How parents will be notified regarding their child's eligibility for compensatory service;
 - b) the specific plan for delivery of compensatory services to each eligible student;
 - c) how the decision of each child's parents regarding their acceptance or rejection of services will be documented; and
 - d) how the completion of compensatory services will be reported to SETS.
- 9) Further, USD #__ shall, within 10 calendar days of the date of this report, submit to SETS one of the following:
- a) A statement verifying acceptance of the corrective action or actions specified in this report;
 - b) a written request for an extension of time within which to complete one or more of the corrective actions specified in the report together with justification for the request; or
 - c) a written notice of appeal. Any such appeal shall be in accordance with K.A.R. 91-40-51(f).

Right to Appeal

Either party may appeal the findings or conclusions in this report by filing a written notice of appeal in accordance with K.A.R. 91-40-51(f)(1). The written notice of appeal may either be emailed to formalcomplaints@ksde.org or mailed to Special Education and Title Services, 900 SW Jackson St, Ste. 602, Topeka, KS, 66612. Such notice of appeal must be delivered within 10 calendar days from the date of this report.

For further description of the appeals process, see Kansas Administrative Regulations 91-40-51(f), which can be found at the end of this report.



Diana Durkin
Complaint Investigator

K.A.R. 91-40-51(f) Appeals.

(1) Any agency or complainant may appeal any of the findings or conclusions of a compliance report prepared by the special education section of the department by filing a written notice of appeal with the state commissioner of education. Each notice shall be filed within 10 days from the date of the report. Each notice shall provide a detailed statement of the basis for alleging that the report is incorrect.

Upon receiving an appeal, an appeal committee of at least three department of education members shall be appointed by the commissioner to review the report and to consider the information provided by the local education agency, the complainant, or others. The appeal process, including any hearing conducted by the appeal committee, shall be completed within 15 days from the date of receipt of the notice of appeal, and a decision shall be rendered within five days after the appeal process is completed unless the appeal committee determines that exceptional circumstances exist with respect to the particular complaint. In this event, the decision shall be rendered as soon as possible by the appeal committee.

(2) If an appeal committee affirms a compliance report that requires corrective action by an agency, that agency shall initiate the required corrective action immediately. If, after five days, no required corrective action has been initiated, the agency shall be notified of the action that will be taken to assure compliance as determined by the department. This action may include any of the following:

- (A) The issuance of an accreditation deficiency advisement;
- (B) the withholding of state or federal funds otherwise available to the agency;
- (C) the award of monetary reimbursement to the complainant; or
- (D) any combination of the actions specified in paragraph (f)(2)