

KANSAS STATE DEPARTMENT OF EDUCATION
SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT
FILED AGAINST
UNIFIED SCHOOL DISTRICT #___
ON SEPTEMBER 3, 2021

DATE OF REPORT: SEPTEMBER 30, 2021

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

Investigation of Complaint

On September 7, 15, 22 and 24, 2021, the investigator spoke via telephone with [SD], Director of Special Education for USD #___. The investigator spoke by telephone with the parent on September 23, 2021

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

- Confidential Educational Evaluation dated November 1, 2019
- IEP for this student dated April 14, 2021
- Email dated August 19, 2021 from the student's father to the student's special education teacher
- Email dated August 20, 2021 from the student's special education teacher to the student's father
- Email exchange dated August 17-18, 2021 between the parent and the student's special education teacher
- Email dated September 1, 2021 from the parent to the student's "team"
- Screen shot of text dated September 2, 2021 from the student to his father
- Email dated September 15, 2021 from the director of special education to the parents
- Online calendar for the 2021-22 school year for USD #___

- Observational notes and data sheets provided by the district covering the period of August 12 through September 10, 2021
- Audio recording of a September 7, 2021 meeting
- Assessment schedule for the district for the 2021-22 school year

Background Information

This investigation involves a 14-year-old boy who is enrolled in the ninth grade in his neighborhood high school. The student first received special education support at age three for articulation-related speech and language needs.

Occupational Therapy services were initiated when the student was in second grade. In April of 2016, following the completion of a reevaluation requested by the parents, the student was determined to have met special education eligibility criteria under the category of Autism.

Currently, the student receives his primary special education support through the SAIL classroom in his building. SAIL is a centralized program designed to serve students with social and interpersonal learning needs.

According to the student's current April 14, 2021 IEP, the student receives the following services:

- 75 minutes of specially designed instruction in a special education classroom for three days a week for study skills;
- 50 minutes of specially designed instruction in a special education classroom for two days a week on block days wherein the student is pulled from his English, math, science, and social studies classes to work on assignments from those classes;
- 15 minutes of specially designed instruction in a special education classroom one day a week on seven-period days wherein the student is pulled from English, math, science, and social studies to work on assignments from those classes;
- 75 minutes of specially designed instruction in a special education setting twice a week for seminar;
- 225 minutes of special education services three times a week in the general education setting for electives and social skills;

- 40 minutes twice a week on block days in general education core classes wherein a special education teacher serves as co-teacher to provide accommodations and modifications;
- 15 minutes once a week on block days in general education core classes wherein a special education teacher serves as a co-teacher to provide accommodations and modifications; and
- 15 minutes once a semester of transition services to discuss future class schedules and college/career.

On September 14, 2021, the director of special education for the district met with both of the student's parents to discuss their concerns. In an email dated September 15, 2021, the director summarized the following actions to be undertaken by the district to address issues covered in the previous day's discussion:

- Open a re-evaluation to obtain updated or new information in the following areas:
 - Speech (pragmatic language)
 - Sensory
 - FBA (to include social emotional)
 - Assistive Technology
- Establish break area designed to meet student needs
- Establish age appropriate reinforcers
- Establish movement opportunities in large classrooms
- Consider monthly scheduled review meetings to review data on an ongoing basis with a decision on these meetings to be made following completion of the re-evaluation.

The parent provided written consent for the reevaluation on September 17, 2021. The district anticipates that the reevaluation will be completed in early December 2021.

Issues

In her complaint, the parent asserts that the district has failed to implement two components of the student's April 14, 2021 IEP, stating that the district:

- failed to follow the student's behavior intervention plan, and
- failed to provide the state assessment accommodations specified in the student's IEP.

Issue One: The district failed to follow the student's behavior intervention plan.

Parent's Position

The parent contends that the district failed to provide four of the accommodations specified in the student's behavior plan by

- not providing reinforcers consistently (if at all) for work completion;
- not chunking assignments for reinforcement;
- not providing breaks or work in alternative locations after a certain amount of class time (i.e. 15 minutes); and
- not consistently providing alternative lunch/passing periods.

District's Position

It is the position of the district that the student's behavior intervention plan has been followed with regard to all areas specified in the parent's complaint.

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.

Investigative Findings and Conclusions

Provision of Reinforcers:

The student's April 14, 2021 IEP includes a Behavior Intervention Plan (BIP). According to the "Daily Preventative" section of the BIP, "a daily reinforcement incentive system to promote positive behavior and encourage motivation" will be utilized.

Additionally, the "Accommodations/Modifications/Supplementary Aids and Services" section of the student's April 2021 IEP contains the following statement:

Throughout the school day, student will be provided with a concrete reinforcement system to maintain motivation and promote positive behavior.

The district contends that reinforcers in the form of food or breaks have been used with the student. However, according to the district, the student has at times opted not to accept these reinforcers.

The district provided the investigator with the following documents:

- Observational report completed by the special education teacher for August 16, 20, and 30, 2021;
- data sheets completed by the special education teacher for:
 - August 23 through August 27, 2021;
 - August 30 and 31, 2021; and
 - September 1, 2, and 3, 2021.

The district also provided data sheets reflecting student performance on three dates after this complaint was filed with KSDE on September 3, 2021.

Only three of the documents provided by the district include any reference to reinforcers prior to the date that this complaint was filed. Observational notes from August 20, 2021 show that during first period, the student was “prompted to ask to pace or break in SAIL – chose SAIL – [and was] offered reinforcement upon arrival to SAIL,” choosing “down time on phone.” Observational notes dated August 30, 2021 contain the statement “attempted to give preferred snack.” The data sheet from September 2, 2021 includes the notation “time with preferred teacher.”

A virtual meeting was held on September 7, 2021 for the purpose of clarifying the language of the student’s behavior intervention plan and ensuring that there was a common understanding about the BIP and IEP. The building principal, the associate principal, special education teacher, a special education coordinator, a school psychologist, and both of the student’s parents participated in that meeting, which was recorded. On the audio recording of the meeting, the team is heard discussing various reinforcers that have been provided to the student by the parents in the home setting and reinforcers which could be provided to the student following the meeting.

While the district provided documents reflecting the use of reinforcers on three occasions with the student, the district did not provide any evidence to show that

reinforcers were being provided to the student throughout every school day prior to September 3, 2021. No evidence of a “reinforcer menu” or a structured, concrete, daily reinforcement schedule was submitted by the district for consideration by the investigator.

The documents provided by the district include only three specific references to the provision of reinforcers to the student. While these notations show that the student was on occasion reinforced for positive behavior, the district provided no evidence to show that any type of “concrete” or “daily” reinforcement system was in place and consistently utilized by staff to motivate the student and encourage his positive behavior during the period of August 12 to September 3, 2021. A violation of special education statutes and regulations is substantiated for failing to provide reinforcers as required by the student’s BIP within the IEP.

Chunking of Assignments:

The student’s April 14, 2021 IEP contains one annual goal related to initiating non-preferred grade-level tasks and one annual goal related to completing these tasks. In order to encourage these goal behaviors and to reduce the incidence of inappropriate behavior, the “Daily Preventative” section of the student’s BIP within the April 14, 2021 IEP states that “[the student] will receive modified or chunked assignments to allow room for reinforcement incentive system.”

Additionally, the “Accommodations/Modifications/Supplementary Aids and Services” section of the student’s April 14, 2021 IEP states “[The] student will receive modified or chunked assignments to allow room for reinforcement incentive system.”

The district reports that when the student is working on a project or assignment that he is interested in, the student will at times reject the chunking modification. According to the district, chunking is offered to the student for every math assignment, but the student declines that accommodation for most assignments. The student is reported by the district to be more responsive to shortened assignments. The district also notes that the student has been offered reduced/shortened assignments in his English language arts (ELA) class.

The district provided no direct evidence to show that the student’s assignments have been consistently “chunked” – broken down into smaller segments that allow staff to provide him with frequent positive reinforcement for work completion. Responses from the district suggest that while assignments have been shortened, the “chunking” of assignments has not been a consistently implemented practice. Under these

circumstances, a violation of special education statutes and regulations is substantiated for failing to chunk the student's assignments as required by the student's IEP.

Provision of Work Breaks or Access to Alternative Work Locations:

The "Daily Preventative" section of the student's BIP within the April 14, 2021 IEP states that "during block scheduling [the student will be provided with] multiple opportunities to receive instruction and take breaks. For ex: Attend 10-15 [minutes] of instruction, receive movement break and/or work opportunity in alternate location, return to class for another 10-15 [minutes] of instruction. Repeat for up to 3 opportunities in the allotted class time."

The district asserts that space has been provided within the SAIL room for the student to take breaks. At the meeting on September 7, 2021, the team discussed the availability of alternate work locations for the student. According to the special education teacher, the SAIL room had been available to the student at any time he asked to go there. The team discussed ways of making that setting more appropriate for the student's use. The team also discussed additional strategies for providing the student with appropriate breaks.

At the September 7, 2021 team meeting, the special education teacher proposed a newly developed data sheet that would reflect the offer of breaks for the student at 15-minute intervals. Data sheets provided by the district for the dates of September 8-10, 2021 show that the new data sheet format was implemented, and the student was offered breaks at 15-minute intervals beginning on September 8, 2021. This complaint was filed with KSDE on September 3, 2021.

The district has made the SAIL room available to the student for breaks or an alternate work setting. However, no evidence was provided by the district to show that, prior to September 8, 2021, the student was provided with work breaks on a structured, consistent basis. Under these circumstances, a violation of special education statutes and regulations is substantiated for failing to provide work breaks and access to alternate work locations as required by the student's BIP within the IEP.

Provision of Alternative Lunch/Passing Time:

According to the "Daily Preventative" portion of the student's BIP within the April 14, 2021 IEP, the student was to be provided with "advance notice of class ending to enable [the student] to utilize alternative passing periods."

The "Accommodations/Modifications/Supplementary Aids and Services" section of the student's April 14, 2021 IEP includes the following statement:

The student will receive alternative passing time to transition from class to class.

On August 19, 2021, the student's father sent an email to the student's special education teacher regarding accommodations for the student during his lunch period. The student's father wrote:

...it is part of his IEP for him to have preferred passing periods. We need 100% alternate passing periods every time...[The student] is coming home a mess and these little things would really help take down the overall level of anxiety he accumulates throughout the day.

The special education teacher responded via email, stating:

All of the staff that works with [the student] has been told that [he] must receive an alternate passing period. I will check in with each one of them again to ensure that they know that this is mandatory. I am sorry if this has not been happening but will make sure that it is being offered consistently and diligently.

According to the district, the student is consistently offered the opportunity for alternate passing times from all of his classes. If he has not opted to take an early release, staff offers the option of waiting to pass after the tardy bell for the next class period has sounded.

The district also reports that, on two or three occasions, the student has indicated that he wanted to take the passing period with peers, and was allowed to do so with special education staff maintaining proximity supervision in order to provide support should it be needed.

On September 14, 2021, the parents of the student met with the director of special education for the district. The director sent a follow-up email to the parents on September 15, 2021 summarizing their discussion. In that email, the director states that the parents had reported that the issue of a failure to provide the student with alternative passing periods had been resolved. In a telephone call with the investigator on September 23, 2021, the parent also reported that this issue had been resolved. A

violation of special education statutes and regulations is not substantiated for failing to provide alternative passing periods as required by the student's IEP.

Issue Two: The district failed to provide the state assessment accommodations specified in the student's IEP.

Parent's Position

The parent contends that when state assessments were conducted in September of 2021, the student was moved to an alternative setting only after the student's father called the school to report that the student was being tested in the classroom.

District's Position

The district states that no state assessments were conducted between the start of the school year and the parent's filing of this complaint. However, it is the position of the district that the student was provided with the accommodation specified in his IEP when the district English/reading assessment was administered.

Applicable Statutes and Regulations

As noted above under Issue One, 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.

Investigative Findings

The "State or Districtwide Assessments" portion of the student's April 14, 2021 IEP states that the student will be provided with an "alternate setting and breaks" for state and district assessments in the areas of reading, math, science, social studies, and writing.

The "Accommodations/Modifications/Supplementary Aids and Services" portion of the student's April 14, 2021 IEP contains the following statement:

Student will receive extended time on all assignments – up to three days – and tests – break into multiple days to loosen anxiety.

No state assessments were administered for ninth-grade students between the start of the 2021-22 school year on August 12, 2021 and September 3, 2021, the date this complaint was filed with KSDE. However, two district Measure of Academic Progress (MAP) assessments were conducted during that same period – math and English/reading.

The MAP testing window extended from August 16 to September 17, 2021. The student was to complete the math portion of MAP testing in the SAIL classroom on September 13, 2021 (after this complaint was filed), but was in what the district describes as a “heightened emotional state” and refused to log into the testing program. He was prompted when in the SAIL room throughout the remaining testing period to log into the testing site to complete the math assessment but refused to do so.

The district MAP assessment for English/reading was conducted over several days in the SAIL classroom. On September 2, 2021 at 8:06 AM, the student sent a text to his father stating, “They were having me do the map test and I was upset at the complications that come with a teacher across a giant building being in control of my test and them not gathering the code beforehand...”. A data sheet for September 2, 2021 provided by the district showed that the student “was upset due to not knowing MAP test was being continued. There was miscommunication and [the student] did not believe he was going to receive his accommodations.”

In response to the student’s text, the student’s father contacted the special education teacher to make sure the student was to be provided with an alternate location for the assessment. The student completed that assessment on September 2, 2021 in the SAIL classroom with the special education teacher present. Breaks were provided.

Summary and Conclusions

No state assessments were conducted between the start of the 2021-22 school year and September 3, 2021. However, district MAP testing was completed during this period. On September 2, 2021, the student became anxious believing that he was not going to be given the testing accommodation for his English/reading test as specified in his IEP. He texted his father who then contacted the special education teacher to ensure that the testing accommodations specified in his April 14, 2021 IEP were provided. The testing was conducted in an alternate setting (the SAIL room) where the student was monitored by the special education teacher who provided the student with breaks. A violation of special education statutes and regulations is not

substantiated for failing to provide assessment accommodations as required by the student's IEP.

Corrective Action

Technical assistance is available from the Assistant Director of TASN General Supervision, Timely and Accurate Data (GSTAD) if the district needs assistance in carrying out these corrective actions.

Information gathered in the course of this investigation has substantiated noncompliance with special education statutes and regulations on issues presented in this complaint. Specifically, a violation was substantiated with regard to 34 C.F.R. 300.323(c)(2) and K.A.R. 91-40-19(a), which require that districts, teachers, and related service providers provide special education and related services in accordance with a student's IEP.

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

- 1) Submit to KSDE Special Education and Title Services (SETS), within 40 days of the date of this report, a written statement of assurance stating that it will comply with 34 C.F.R. 300.323(c)(2) and K.A.R. 91-40-19(a) by implementing this student's IEP as written.
- 2) Within 40 days of the date of this report, USD#__ shall submit to SETS, for review and approval, a plan which includes specific strategies for documenting that the student is being provided with the following accommodations:
 - a) Assignment chunking structured to provide specific opportunities for reinforcement;
 - b) the creation and implementation of a daily, concrete reinforcement system designed to promote positive behavior and encourage motivation; and
 - c) the continued provision of consistently scheduled opportunities for work breaks.
- 3) Within 2 school days of SETS approval of the plan specified in Corrective Action 2, USD #__ shall implement the approved plan.

- a) By no later than June 6, 2022, USD #__ shall submit to SETS documentation verifying that the accommodations described above in Corrective Action 2 were implemented throughout the remainder of the 2021-22 school year until or unless the student's IEP team removes any or all of the specified accommodations from the student's IEP.
- 4) Within 40 days of the date of this report, USD #__ shall submit to SETS for review and approval a copy of the reinforcement plan being used for this student. That plan shall specify:
 - a) the reinforcers/reinforcement strategies being used with the student; and
 - b) the schedule or procedures staff will be using to determine how and when the student will earn reinforcement.
- 5) Within 2 school days of SETS approval of the plan specified in Corrective Action 4, USD #__ shall implement the approved plan.
 - a) By no later than June 6, 2022, USD #__ shall submit to SETS documentation verifying that the reinforcement plan described above in Corrective Action 4 was implemented throughout the remainder of the 2021-22 school year.
- 6) Within 40 days of the date of this report, USD#__ shall submit to SETS for review and approval, a sample of documentation that will be used to show that the student has been provided with concrete, daily reinforcers.
- 7) By no later than June 6, 2022, USD #__ shall submit to SETS documentation that the concrete, daily reinforcers referenced above in Corrective Action 6 were provided to the student throughout the remainder of the 2021-22 school year until or unless the student's IEP team determines that the student no longer needs daily, concrete reinforcement.
- 8) a) Within 40 days of the date of this report, USD #__ shall develop and submit to SETS for review and approval a plan for training of general and special

education staff serving this student regarding the appropriate implementation of the elements of the student's BIP and accommodations/modifications specified above in Corrective Action 2.

b) Once the training plan described above under Item 5)a) has been approved by SETS, USD #__ must implement that training within 10 school days after SETS approval.

9) No later than 5 school days before implementing the approved training plan described in Corrective Action 5 above, the director of special education of USD #__ and the administrators of the student's school shall complete and submit to SETS a pre-training administrator survey. No later than 5 school days after implementing the training plan described in Corrective Action 5 above, the director of special education of USD #__ and the administrators of the student's school shall complete and submit to SETS a post-training administrator survey. The TASN GSTAD Assistant Director will provide the survey and further instructions in a follow-up communication with the district's Director of Special Education.

10) No later than 5 school days after implementing the approved training plan described in Corrective Action 5 above, every staff member who participated in the training shall complete and submit to SETS a post-training staff survey. The TASN GSTAD Assistant Director will provide the survey and further instructions in a follow-up communication with the district's Director of Special Education.

11) 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)