

KANSAS STATE DEPARTMENT OF EDUCATION
SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT
FILED AGAINST
UNIFIED SCHOOL DISTRICT #501
ON OCTOBER 7, 2021

DATE OF REPORT NOVEMBER 10, 2021

This report is in response to a complaint filed with our office on behalf of _____ by _____. Mr. _____ has been appointed the education advocate for this student by Families Together and, as such, has all of the rights of a parent under the law regarding special education. In the remainder of this report, _____ will be referred to as “the student” and Mr. _____ will be referred to as “the parent” or “the complainant.”

The complaint is against USD #501 (Topeka Public Schools). In the remainder of the report, USD #501 will be referred to as the “school,” the “district” or the “local education agency (LEA).”

The Kansas State Department of Education (KSDE) allows for a 30-day timeline to investigate a child complaint and a complaint is considered to be filed on the date it is delivered to both the KSDE and to the school district. In this case, the KSDE initially received the complaint on October 7, 2021; however, the complainant did not deliver a copy of the complaint to the school district at the same time it was delivered to the KSDE. The KSDE delivered a copy of the allegations to the school district on October 11, 2021. For this reason, the 30-day timeline to investigate this complaint ends on November 10, 2021.

Investigation of Complaint

Nancy Thomas, Complaint Investigator, interviewed the parent by telephone on October 13, 2021. The complainant did not respond to a request for an additional interview on either October 14, 2021 or November 4, 2021 but did respond in writing to a questionnaire on November 5, 2021.

USD #501 made the following school staff available for a telephone interview on November 5, 2021:

- Dr. Jennifer Harrington, Director of Special Education
- Richard, Bolejack, Special Education Consulting Teacher at the Shawnee County Juvenile Detention Center
- Lori Kopp, General Counsel for USD #501

On November 9, 2021, USD #501 made the following school staff at the Shawnee County Juvenile Detention Center available for a telephone interview:

- Sarah Jennings, Classroom Teacher
- Stephanie Allen, Classroom 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:

- Individualized Education Program (IEP) dated January 28, 2021 and amended on April 23, 2021 developed by the IEP team in USD #430
- Phone Log dated between August 25, 2021 and September 21, 2021 written by Tom Ross, Special Education Consulting Teacher at Shawnee County Juvenile Detention Center
- Email dated September 20, 2021 at 3:03 p.m. from Phoebe Nordyke, Communication Specialist in the Superintendent's Office, to Dr. Harrington
- Email dated September 21, 2021 at 7:37 a.m. from Mr. Bolejack to Dr. Harrington
- Notice of Meeting dated September 23, 2021 scheduling an IEP team meeting for September 28, 2021
- IEP dated September 28, 2021 developed by the IEP team in USD #501
- Conference Summary / IEP Team Considerations dated September 28, 2021
- Prior Written Notice for Identification, Special Education and Related Services, Educational Placement, Change in Services, Change in Placement, and Request for Consent (PWN) dated September 28, 2021 and signed by the parent on October 14, 2021
- Topeka Public Schools Release of Information Form signed by the parent on September 30, 2021

- Email dated October 15, 2021 at 10:44 a.m. from Andrea Watts, Coordinator of the Shawnee County Juvenile Detention Center, to Dr. Harrington
- Email dated October 15, 2021 at 1:18 p.m. from Mr. Bolejack to Dr. Harrington
- Email dated October 21, 2021 at 11:29 a.m. from Susan Christiansen, Consulting Teacher, to Dr. Harrington
- Email dated October 26, 2021 at 11:08 a.m. from Mr. Ross to Dr. Harrington
- Response to the Allegations dated October 27, 2021 written by Dr. Harrington and Ms. Kopp
- Questionnaire dated November 5, 2021 completed by the parent
- USD #501 District Calendar for the 2021-22 school year

Background Information

This investigation involves a 17-year-old male student who is eligible for special education and related services under the exceptionality category of emotional disturbance. He has been incarcerated at the Shawnee County Juvenile Detention Center since June 11, 2021 and USD #501 is responsible for providing both general education and special education services to the students housed in this facility. The student previously attended Horton High School in USD #430 (South Brown County School District) where he received special education services.

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 parent raised two issues that were investigated.

ISSUE ONE: The USD #501, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), shared personally identifiable information without appropriate written consent with the Shawnee County Juvenile Detention Center and KVC Kansas (foster care provider) during the past 12 months.

Positions of the Parties

The parent reported that confidential information about the student was shared with the juvenile detention center staff and the foster care contractor without his consent. He indicated that Andrea Watts, Coordinator of the Shawnee County Juvenile Detention Center, told him that all of the education records were shared and he believes that there has been an on-going sharing of information between USD #501 and the other agencies beginning with the student's admission in June 2021.

However, the parent advocate did not provide any specific information about what personally identifiable information was shared, the date(s) the information was shared, or to whom the information was shared. The complainant bases this allegation on his conversation with Ms. Watts, information shared with him during the September 28, 2021 IEP team meeting, and one email; however, the specific email was not provided to be reviewed and considered by the investigator.

Dr. Harrington acknowledged that the educational records received were shared with the teachers and administrators at the Shawnee County Juvenile Detention Center but noted that these are USD #501 staff members who are responsible for providing both general and special education services to students housed at the Shawnee County Juvenile Detention Center. Through an internal investigation, Dr. Harrington found that none of the staff at the Shawnee County Juvenile Detention Center reported sharing any personally identifiable information with either the jail staff at the Shawnee County Juvenile Detention Center or the staff from KVC Kansas, the foster child contractor.

The district reported that the parent requested personally identifiable information be shared with the KVC Kansas and the Shawnee County Juvenile Detention Center at the IEP team meeting scheduled for September 28, 2021 but held on September 29, 2021 due to a scheduling conflict. School staff provided a release of information form and the parent gave written consent to share this information on September 30, 2021. The LEA believes the student's personally identifiable information was appropriately kept confidential as required by all state and federal regulations.

Findings of the Investigation

The following findings are based upon a review of documentation and interviews with the parent and LEA staff in USD #501.

The student was incarcerated in June 2021 at the Shawnee County Juvenile Detention Center. USD #501 is responsible for providing general education and special education services to students housed in this facility.

Ms. Watts was employed by USD #501 as the Coordinator at the Shawnee County Juvenile Detention Center. Mr. Ross and Mr. Bolejack were employed as the Special Education Consulting Teachers at the Shawnee County Juvenile Detention Center. The staff's first day of employment for the 2021-22 school year was July 23, 2021.

Ms. Jennings and Ms. Allen were employed as classroom teachers at the Shawnee County Juvenile Detention Center. August 12, 2021 was the first day of school of the 2021-22 school year for USD #501.

The student's special education records were requested from the previous school district at the beginning of August, 2021. Dr. Harrington reported that the student's educational records from USD #430, the previous school district, were received on September 9, 2021.

It is noted that Ms. Watts was unable to be interviewed as part of this investigation because she is no longer employed by USD #501. Dr. Harrington reported that Ms. Watts accepted a position in another agency and her last day of employment was October 29, 2021. However, the district provided an email written by Ms. Watts in their documentation where she stated, "I didn't have any contact with a KVC worker".

Mr. Ross reported in writing and Mr. Bolejack reported both in writing and in an interview that no information regarding the student was shared with staff from KVC Kansas. Ms. Jennings and Ms. Allen both stated that they did not share any information about the student with any staff from another agency.

The Conference Summary / IEP Team Considerations dated September 28, 2021 document that the parent requested USD #501 share personally identifiable

information between the Shawnee County Juvenile Detention Center and KVC Kansas. A Release of Information Form was provided on September 29, 2021 and returned signed by the parent on September 30, 2021.

Documentation shows that no requests for the student's records had been received by USD #501 as of October 21, 2021.

Applicable Regulations and Conclusions

Federal regulation implementing the IDEA at 34 C.F.R. 300.622(a) require that school districts obtain written consent from the parent or guardian of a student prior to disclosing personally identifiable information to a third party. However, federal regulation implementing the IDEA at 34 C.F.R. 300.622(b)(1) allows personally identifiable information to be released to officials of participating agencies for the purposes of meeting the requirements of the IDEA. This exception includes sharing education records without parents' written consent in order to continue to provide special education and related services when a student transfers from one school district to another.

In this case, the student was incarcerated at the Shawnee County Juvenile Detention Center in June 2021. USD #501 is responsible for providing both the general education and special education services to the student and appropriately obtained the educational records from USD #430, the previous school district, without the written consent of the parent. These records were appropriately shared with the staff providing educational services at the Shawnee County Juvenile Detention Center.

Interviews with district staff and documentation provided by the district showed that no personally identifiable information was shared with KVC Kansas. No documentation was provided by the complainant to substantiate that any information had been shared with KVC Kansas staff.

Based on the foregoing, a violation of special education statutes and regulations is not substantiated for failing to obtain appropriate written consent prior to sharing personally identifiable information with the Shawnee County Juvenile Detention Center and KVC Kansas (foster care provider) during the past 12 months.

The Complaint Investigator notes that the documentation from the IEP meeting including the IEP document, the PWN, and the Conference Summary / IEP Team Considerations are all dated September 28, 2021 but interviews with school staff indicated that the IEP team meeting was actually held on September 29, 2021 due to a scheduling conflict. This inconsistency causes confusion and could contribute to future miscommunication between the parties.

ISSUE TWO: The USD #501, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to include the parent in the IEP team meeting held for the student and then failed to respond appropriately to the parent's request for an IEP team meeting during the past 12 months.

Positions of the Parties

The parent reported Ms. Watts told him that USD #501 conducted an IEP team meeting when the student was initially incarcerated at the Shawnee County Juvenile Detention Center. He indicated that he was not invited to that IEP team meeting and that a second IEP team meeting was finally held at the end of September but only after his multiple requests to schedule a meeting.

He reported that he initially requested an IEP team meeting on August 25, 2021 in a phone conversation with one of the consulting special education teachers after learning of the first meeting that he did not attend. He indicated that he called 11 to 15 times and left messages but that no one would return his phone calls. He finally contacted the Office of the Superintendent on September 20, 2021 and an IEP team meeting was held on September 29, 2021.

USD #501 acknowledged that Ms. Watts mistakenly told the parent that an IEP meeting was held when the student was initially placed at the Shawnee County Juvenile Detention Center. Dr. Harrington reported that Ms. Watts had assumed an IEP meeting had been held when the student transferred into the Shawnee County Juvenile Detention Center but upon further investigation learned that no meeting had been scheduled. Ms. Watts subsequently worked with Mr. Ross and Mr. Bolejack to schedule an IEP team meeting for September 28, 2021 and contacted the parent to make him aware of her mistaken understanding.

USD #501 disputes the allegation that they failed to respond appropriately the parent's requests for an IEP team meeting. Dr. Harrington acknowledged that the parent had multiple conversations with the school staff at the Shawnee County Juvenile Detention Center but indicated the educational advocate never requested an IEP team meeting in any of those interactions. She reported that the first request for an IEP team meeting was received on September 20, 2021 when the parent contacted the Superintendent's Office and complained of trying to get "an IEP signed" for the past two weeks with a minimum of 11 phone calls to school staff with no response. Once this request was received, a notification for an IEP meeting was sent to the parent on September 23, 2021. The IEP meeting scheduled for September 28, 2021 and held on September 29, 2021 with the parent in attendance.

Findings of the Investigation

The following findings are based upon a review of documentation and interviews with the parent and LEA staff in USD #501.

The findings of Issue One are incorporated herein by reference.

An email dated September 20, 2021 written by Patricia Nordyke to Dr. Harrington stated:

I just received a call from the parent in regards to the student and an IEP. He stated that is trying to get an IEP signed and has left messages for Tom or Todd, not sure of the name on the voicemail . . . He has left 11 messages and has not received any contact back. He has been trying to get this done for over 2 weeks. He said he spoke with the principal and social worker about this and it was shared that they would get it taken care of but still has not had any contact.

An email dated October 15, 2021 at 10:44 a.m. written by Ms. Watts stated:

There was no IEP meeting held prior than 9/28. When the student arrived, I had started the transition into the JDC [Juvenile Detention Center] program and mistakenly assumed that one may have been held prior to me joining the team. After I researched and investigated, I discovered one was not held and worked with Mr. Ross (once school officially started) to

get one scheduled. I also contacted the educational advocate and let him know that one had not been held and we would work with him to get it scheduled.

An email dated October 15, 2021 at 1:18 p.m. written by Mr. Bolejack stated:

I only invited him [the parent] to one IEP team meeting and it was scheduled for 09/28/2021, but held on 09/29/2021 due to a scheduling conflict. The meeting date for the IEP was scheduled on 09/23/2021. This being only 5 days notice, he agreed to waive the 10 day notice.

Mr. Bolejack confirmed this information during an interview conducted on November 5, 2021.

The Phone Log kept by Mr. Ross documented phone calls were made between the parent and himself between August 25, 2021 and September 21, 2021. Mr. Ross summarized his contacts with the parent in an email dated October 26, 2021 by indicating that he made the parent aware that the district was still waiting to receive the educational records from the previous school district and that a meeting would be held once those records were received.

Ms. Jennings and Ms. Allen both indicated that they were unaware of any IEP team held prior to September 29, 2021 and, if one was held, neither was in attendance. Ms. Allen stated that she attended the September 29, 2021 IEP team meeting and the IEP Meeting Participants list from that IEP confirms she was in attendance.

Applicable Regulations and Conclusions

Federal regulation implementing the IDEA at 34 C.F.R. 300.322(a) require school districts to ensure that one or both of the parents of a child with a disability are present at each IEP Team meeting or are afforded the opportunity to participate.

In this case, Ms. Watts initially shared inaccurate information regarding an IEP team meeting for the student which led to the impression that an IEP team meeting had been held without the parent being provided the opportunity to participate. However, interviews and documentation found that only one IEP team meeting was held for the

student by USD #501 following his incarceration at the Shawnee County Juvenile Detention Center. This IEP team meeting was held on September 29, 2021 with the parent in attendance.

In addition, federal regulation implementing the IDEA at 34 C.F.R. 300.324(b) require school districts to respond to a parent's request to review and revise a student's IEP as appropriate. The IDEA does not specify a timeline for the district to respond to a parent's request but the KSDE has recognized 15 school days as a reasonable amount of time.

In this case, based upon the misinformation about an IEP team meeting being held without the parent's knowledge initially provided by Ms. Watts, it is reasonable to believe that the parent contacted the Shawnee County Juvenile Detention Center staff to request that an IEP team meeting be scheduled so that he could participate.

Because the student was transferring from another LEA, USD #501 informed the parent sometime on or about August 25, 2021 that an IEP team meeting would be scheduled once the educational records were received. The interviews and documentation indicate that the educational records were received from the previous school district on September 9, 2021.

While it is unclear when and how many contacts the parent made to the school staff at the Shawnee County Juvenile Detention Center, it is clear that he was frustrated with a lack of prompt responses and reached out to the Office of the Superintendent on September 20, 2021. Following that contact, USD #501 gave the parent a Notification of Meeting on September 23, 2021 for an IEP team meeting scheduled for September 28, 2021 with the parent waiving the required 10-day timeline for providing the notification. The IEP team meeting was held on September 29, 2021 due to a scheduling conflict, which is 15 school days from the date the educational records were received by the LEA.

Based on the foregoing, a violation of special education statutes and regulations is not substantiated for failing to include the parent in the IEP team meeting held for the student and then failing to respond appropriately to the parent's request for an IEP team meeting during the past 12 months.

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)