

KANSAS STATE DEPARTMENT OF EDUCATION
SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT
FILED AGAINST
UNIFIED SCHOOL DISTRICT #260
ON DECEMBER 20, 2021

DATE OF REPORT: JANUARY 7, 2022

This report is in response to a complaint filed with our office by ___ and _____ on behalf of their daughter, _____. For the remainder of this report, _____ will be referred to as "the student." Mr. and Mrs. _____ will be referred to as "the parents." Mr. _____ will be referred to as "the student's father," Mrs. _____ will be referred to as "the student's mother."

Investigation of Complaint

Diana Durkin, Complaint Investigator, spoke by telephone with Dawn Gresham, Director of Special Services for USD #260, on December 21, 2021 and January 2, 2022. The investigator spoke by telephone with the student's father on December 28, 2021.

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

- IEP for this student dated October 26, 2021
- IEP Amendment dated December 10, 2021
- Meeting Summary dated December 10, 2021
- Email exchanges dated December 16 and 17, 2021 between the building principal, assistant principal, language arts teacher, director of special education, assistant director of special services, school psychologist, and assistant superintendent
- Email exchange dated December 17, 2021 between the principal and the school psychologist
- Online calendar for the district
- Notice of Meeting form dated December 17, 2021

Background Information

This investigation involves a fifteen-year-old girl who is enrolled in the tenth grade in her neighborhood high school. The student has received special education services in the district since fourth grade. She has been diagnosed with Attention Deficit Hyperactivity Disorder (ADHD) combined type and Anxiety.

Issue

In their written complaint, the parents identified the following issue:

Issue One: The parents' request for modifications to the student's IEP was denied by the district.

Applicable Statutes and Regulations

The IEP for an exceptional student is developed by a team that includes parents, school professionals, the student (when appropriate), and – if addressing transition needs) personnel from other agencies as appropriate. The school is responsible for determining when it is necessary to conduct an IEP meeting, but the parents of a child with an exceptionality have the right to request an IEP meeting at any time (K.S.A. 72-3429(f)).

The State of Kansas has established 15 school days as a “reasonable time” to respond to a parent’s proposal regarding the initiation, or change of, identification, evaluation, placement, or the provision of FAPE to a child with an exceptionality when statutes or regulations do not fix a specific timeline for action. The 15 school-day timeline would apply in the case of a parental request for an IEP team meeting since Kansas statutes and regulations do not fix any other specific timeline for district action. (See KSDE Memo, “Reasonable Time” to respond to parent request for evaluation, January 8, 2002, at <https://www.ksde.org/Default.aspx?tabid=614> .)

IEP team meetings are to be scheduled at a mutually agreed upon time and place (K.A.R. 91-40-17(a)(1)). The school must provide notice of an IEP meeting to the parents for the initial IEP meeting and any subsequent IEP meetings. The notice must be provided in writing at least 10 days prior to the meeting (K.A.R. 91-40-17(a)(2)). A parent may provide consent for the team to conduct an IEP Team meeting with less than 10-day notice if both parties have agreed to hold the meeting within the 10-day window.

One of the procedural safeguards afforded to parents is the requirement for prior written notice of certain proposed education actions. Prior written notice is required when the district proposes to initiate or change the educational placement of a child or the provision of special education and related services (FAPE) to that child. Prior Written Notice must also be provided when a district refuses a parent's request to make a change to the provision of a FAPE to the child (K.S.A. 72-3430(b)(2) and 34 C.F.R. 300.503(a)(2)).

Parent's Position

The parents assert that, because the district did not convene an IEP meeting on a date designated by the parent, the district has denied their request for the addition of two accommodations to the student's October 26, 2021 IEP.

The parents contend that while the student's current teachers allow her to use headphones as a general education accommodation, future teachers may not permit the use of headphones unless the accommodation is explicitly included in the student's IEP.

The student's father states that while the student's October 2021 IEP calls for a reduction of 25% in math assignments and assessments, he believes that her overall anxiety level would be significantly reduced if that reduction was extended in all of her classes.

District's Position

It is the position of the district that the parents' claim that their request for changes to the student's IEP has been denied by the district is premature. The district asserts that an IEP Team meeting to further discuss this request was proposed by the district for January 5, 2022 – three school days after the request for a meeting by the student's father – but the student's father has stated that he will not participate in the meeting.

Investigative Findings

A meeting was held on Friday, December 10, 2021. Neither the district nor the student's father describe this meeting as an IEP team meeting. According to both parties, the purpose of the meeting was to facilitate a conversation between the parent, special education staff, and the student's second semester teachers in order to provide those teachers with information about the student and her IEP. Additionally,

this group was to discuss the removal of a social skills support class from the student's schedule.

According to a summary of the meeting written by the student's case manager, the following people were in attendance:

- the student's father
- the student's case manager
- the counselor
- an assistant principal
- the assistant director of special services
- the student's aerospace science instructor
- the student's history teacher
- the student's chemistry teacher
- the student's PE teacher
- the student's language arts teacher
- the student's journalism teacher

The summary shows that the student's father was introduced to the student's second semester teachers. The teachers were reminded that they had been sent a copy of the student's IEP and were asked to review the accommodations and special considerations included in that document including the student's "Sub Plan."

The summary indicates that the group discussed the removal of a Social Skills class from the student's IEP. The group also addressed the parent's request for two accommodations (listening to music during independent work time and a 25% reduction in coursework load across all courses). They reviewed written comments provided by the student's mother regarding paraeducator support for the student as well as modifications associated with the student's reading level.

Following the discussion, the student's father told the group that he would be following up with a member of the Special Education and Title Services (SETS) division of the Kansas State Department of Education (KSDE) to get his opinion regarding the addition of accommodations. According to the summary, the student's father told the group that, after he had consulted with SETS/KSDE, he would contact the district so that accommodations could be discussed further and a decision regarding how to move forward could be made.

The student's father told the investigator that he spoke with the assistant director of special services as the two left the meeting on December 10, 2021, telling the assistant director that it should be easy to add the two accommodations he had requested to the student's IEP.

At 2:44 PM on Thursday, December 16, 2021, the building principal sent an email to the director and assistant director of special services, the school psychologist, the student's language arts teacher, and the assistant principal stating

[The student's father] has stated he is filing a formal complaint if he does not have an IEP by tomorrow morning....I do not have an IEP to share with him and I know there has been much conversation and frustration this week with this matter. I need to know who and when someone can make contact and assist with or determine what he needs.

At 2:45 PM, the school psychologist sent the principal a copy of the student's IEP.

At 2:48 PM, the assistant principal sent an email to the building principal, school psychologist, director of special education, assistant director of special services, and the student's language arts teacher stating

"Just spoke to [the student's father] again. He wants an IEP meeting tomorrow. I told him I would let you all know about it..."

The principal responded, stating that he would be unable to attend a meeting the following day. The director of special services also responded stating

"While a parent can request reasonable accommodations and an IEP meeting, the IEP Team is...who can discuss and the LEA (local education agency) makes the final offer of FAPE (free appropriate public education)...I will offer him an IEP meeting upon return in January."

At 3:18 PM, the student's special education teacher sent an email to the principal and assistant principal, school psychologist, and director of special services to tell them that the student's father had emailed her "about having an IEP meeting tomorrow."

The assistant director of special services called the parent at around 4:30 PM on December 16, 2021 and told the parent that the district had ten business days to set up the meeting. According to an email sent to the principal, assistant principal, school

psychologist, director of special education, case manager, and assistant superintendent, the parent stated that he would be "getting the State involved."

Prior notice of a January 5, 2022 IEP meeting was provided to the parents by the school psychologist via HelloSign, the district on-line system. Notice was also sent via certified letter on December 17, 2021.

According to the online calendar, the last day of school for the district before winter break was December 17, 2021. Students did not return to classes until January 4, 2022.

The director of special education told the investigator that the student's father called her on December 22, 2021 to tell her he would not be participating in the proposed January 5, 2022 meeting. On December 28, 2021, the student's father confirmed to the investigator that he had responded to the district's notice indicating that he would not participate in the team meeting, opting instead to wait for the finding of this complaint.

In a phone call with the investigator on January 2, 2022, the director of special services stated that the district is open to discussing the parents' request for changes to the student's IEP and hopeful that the parties can come to agreement on a time for an IEP meeting.

While, at the time this report was completed, the parties had not agreed upon a time for an IEP team meeting for the purpose of considering the parents' request for changes to the student's October 26, 2021 IEP, no evidence has been provided to show that the district has refused to schedule an IEP meeting within a reasonable time to consider the parent's requests.

Summary and Conclusions

On Thursday, December 16, 2021, the student's father contacted the building principal, the assistant principal, and the student's case manager stating that he wanted to have an IEP team meeting on the following day, Friday, December 17, 2021. The assistant director of special services contacted the student's father to offer to set a meeting during the first week of January 2022 when students returned to school after winter break which began December 18, 2021. The parent declined to agree to any date for the meeting other than December 17, 2021.

On December 17, 2021, a 10-day prior notice was sent to the parents for an IEP team meeting on January 5, 2022 – the second school day after the conclusion of winter break and three school days after the parent made his request for an IEP team meeting. The student’s father has told the director of special services and this investigator that he will not participate in any IEP meeting until the investigation of this complaint had been completed.

The district’s failure to schedule an IEP team meeting within 24 hours of the parent’s request is not a violation of special education statutes and regulations. The district responded to the parent the same day his request was made and offered a meeting within 3 school days of that request. The district’s proposal for an IEP team meeting on a date other than the one mandated by the parent does not constitute a failure to respond within a reasonable time to the parent’s request for an IEP meeting and certainly not a refusal of the parents’ requested changes to the student’s IEP. A violation of special education statutes and regulations is not substantiated.

Corrective Action

Information gathered in the course of this investigation has *not* identified any areas of noncompliance with special education statutes and regulations. Therefore, no corrective actions are required.

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)